

United States 13

Circuit Court of Appeals

For the Ninth Circuit.

AKTIESELSKAPET BONHEUR, a Corporation,
Appellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation, Claimant of the
American Steamer "BEAVER," Her Tackle,
Apparel, Engines, Boilers, Furniture, etc.,
Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

AUG 28 1922

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

AKTIESELSKAPET BONHEUR, a Corporation,
Appellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation, Claimant of the
American Steamer "BEAVER," Her Tackle,
Apparel, Engines, Boilers, Furniture, etc.,
Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Additional Testimony Taken on Submission of Cause	252
Agreement as to Time and Place of Taking Depositions	162
Answer	10
Assignment of Errors.	315
Certificate of Clerk U. S. District Court to Apostles on Appeal.	321
Certificate of Clerk U. S. District Court to Original Exhibits	330
DEPOSITIONS ON BEHALF OF LIBEL- ANT:	
ELLERTSEN, FREDERICK JOHAN.	126
Cross-examination	131
RANKIN, OLIVER PEHR.	136
Cross-examination	144
Redirect Examination	154
Recross-examination	155
SILVERSEN, L. K.	284
Cross-examination	289
Redirect Examination	292
Recross-examination	292

	Index.	Page
DEPOSITIONS ON BEHALF OF LIBEL-		
ANT—Continued:		
Redirect Examination		295
Recross-examination		298
Further Redirect Examination.....		300
DEPOSITIONS ON BEHALF OF CLAIM-		
ANT:		
BLACKETT, JOSEPH		258
Cross-examination		261
Redirect Examination		271
Recross-examination		274
EVERS, FRANK H.		275
Cross-examination		278
Redirect Examination		281
Recross-examination		282
RICHARDS, LOWELL L.		163
Cross-examination		175
SMULL, J. B.		186
Cross-examination		217
Redirect Examination (By Mr. Kirlin)		
.....		229
Recross-examination (By Mr. Frank)		
.....		233
Redirect Examination (By Mr. Wool-		
sey)		246
Recross-examination (By Mr. Frank)		
.....		247
EXHIBITS:		
Exhibit "A"—Group of Documents Refer-		
ring to Fuel Oil for M. S. "Bayard" ..		66

EXHIBITS—Continued:

Exhibit "B"—Group of Documents Refer- ring to Stores on M. S. "Bayard"	71
Exhibit "C"—United States of America Bunkers License—M. S. "Brazil"	96
Exhibit "D"—Ship Stores License—M. S. "Brazil"	101
Libelant's Exhibit No. 1 — Letter Dated November 8, 1917, San Francisco & Portland Steamship Company to Nathan Frank	323
Libelant's Exhibit No. 2 — Statement of Cost of Handling Cargo	325
Libelant's Exhibit "A"—Charter-party . . .	327
Claimant's Exhibit "A"—Telegram Dated December 5, 1917, American Asiatic Company, Inc., to Chartering Com- mittee United States Shipping Board.	195
Claimant's Exhibit "B"—Telegram Dated December 5, 1917, Chartering Com- mittee to American Asiatic Company . .	196
Claimant's Exhibit "C"—Telegram Dated December 5, 1917, American Asiatic Company to Chartering Committee United States Shipping Board	197
Claimant's Exhibit "D"—Telegram Dated December 6, 1917, Chartering Com- mittee to American Asiatic Company.	197
Claimant's Exhibit "E"—Telegram Dated December 7, 1917. G. W. McNear, Inc.	

	Index.	Page
EXHIBITS—Continued:		
to United States Shipping Board Chartering Committee		198
Claimant's Exhibit "F"—Telegram Dated December 7, 1917, Chartering Com- mittee to G. W. McNear, Inc.		199
Claimant's Exhibit "G"—Telegram Dated December 15, 1917. G. Loken to United States Shipping Board Char- tering Committee		200
Claimant's Exhibit "H"—Telegram Dated December 15, 1917. Welding Ring to G. W. McNear.		201
Claimant's Exhibit "I"—Telegram Dated December 15, 1917. G. W. McNear, Inc. to Welding Ring.		201
Claimant's Exhibit "J"—Telegram Dated December 18, 1918, G. W. McNear to Chartering Committee United States Shipping Board		202
Claimant's Exhibit "K"—Telegram Dated December 21, 1917. G. W. McNear to Chartering Committee		204
Claimant's Exhibit "L"—Telegram Dated December 21, 1917. Chartering Com- mittee to G. W. McNear, Inc.		205
Claimant's Exhibit "M"—Telegram Dated December 21 1917. Chartering Com- mittee to G. W. McNear, Inc.		206
Claimant's Exhibit "N"—Telegram Dated		

EXHIBITS—Continued:

December 22, 1917. G. W. McNear to Chartering Committee	206
Claimant's Exhibit "O"—Telegram Dated December 24, 1917. G. W. McNear to Chartering Committee	207
Claimant's Exhibit "P"—Telegram Dated December 24, 1917. Chartering Committee to G. W. McNear.....	208
Claimant's Exhibit "Q"—Telegram Dated November 27, 1917. W. R. Grace & Company to Chartering Committee..	210
Claimant's Exhibit "R"—Telegram Dated December 15, 1917. G. W. McNear, Inc. to United States Shipping Board Chartering Committee	211
Claimant's Exhibit "S"—Telegram Dated December 6 1917. W. R. Grace & Company to Chartering Committee..	213
Claimant's Exhibit "T"—Telegram Dated December 27, 1917. G. W. McNear to Chartering Committee	214
Claimant's Exhibit "U"—Telegram Dated January 4, 1918. G. W. McNear, Inc. to Welding Ring	215
Claimant's Exhibit "V"—Telegram Dated January 7, 1918. Chartering Committee to G. W. McNear, Inc.	216
Claimant's Exhibit "X"—Telegram Dated October 5, 1918. Burling to Chartering Committee	246

Index.	Page
Final Decree	311
Interlocutory Decree	305
Libel in Rem	5
Notice of Appeal.....	314
Notice of Taking Deposition De Bene Esse....	158
Opinion and Order to Enter Decree in Favor of Libelant, etc.	303
Order Extending Time to and Including June 17, 1922, to File Assignment of Errors and Docket Cause	319
Order Extending Time to and Including June 17, 1922, to File Assignment of Errors and Docket Cause (Original)	331
Order Extending Time to and Including July 17, 1922, to File Assignment of Errors and Docket Cause	320
Order Extending Time to and Including August 10, 1922, to File Assignment of Errors and Docket Cause	320
Order Fixing Amount of Final Decree.....	311
Praeipie for Apostles	1
Statement of Clerk U. S. District Court.....	2
Stipulation Dispensing With the Taking of the Deposition of J. Beaver White.....	250
Stipulation for Depositions in New York and Washington, D. C.	160
Stipulation for Depositions in New York and Washington, D. C.	184
Stipulation for Filing of Original Exhibits in Circuit Court of Appeals on Appeal Here- in, and Order Thereon.....	318

Index. Page

Stipulation Re Printing Transcript of Record.	332
Stipulation Submitting to the Determination of the Court Certain Disputed Items of Damage	307
TESTIMONY ON BEHALF OF LIBEL- ANT:	
BRYN, E.	38
Cross-examination	44
KUTTER, F. W.	107
MOORE, DUVAL	17
Cross-examination	19
PAGE, ARTHUR	22
Cross-examination	29
Redirect Examination	35
TESTIMONY ON BEHALF OF RESPOND- ENT:	
CORY, ISAAC H.	50
Cross-examination	60

In the District Court of the United States in and
for the Northern District of California, First
Division.

No. 16,303.—IN ADMIRALTY.

AKTIESELSKAPET BONHEUR,

Libelant,

vs.

American Steamer "BEAVER," Her Tackle, etc.,
Respondent,

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Praeceptum for Apostles.

To the Clerk of the Above-entitled Court:

Confirming our request for the preparation of the apostles on appeal conveyed to you on April 20th last, we hereby respectfully request that you prepare, in accordance with Rule 4, in Admiralty, of the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on appeal of said above-entitled cause to said Circuit Court of Appeals, and send said Apostles to said Circuit Court of Appeals, with all convenient speed.

Dated, August 3d, 1922.

NATHAN F. FRANK,

IRVING H. FRANK,

Proctors for Libelant.

[Endorsed]: Filed Aug. 3, 1922. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk.

[1*]

[Title of Court and Cause.]

No 16,303

Statement of Clerk, U. S. District Court.

PARTIES.

Libelant: AKTIESELSKAPET BONHEUR, a
Corporation.

Respondent: The American Steamer "BEAVER,"
her Tackle, Apparel, Engines, Boilers, Furni-
ture, etc.

Claimant: SAN FRANCISCO & PORTLAND
STEAMSHIP CO., a Corp. [2]

PROCTORS.

For Libelant: NATHAN H. FRANK, ESQ., and
IRVING H. FRANK, ESQ.

For Respondent and Claimant: FARNHAM
GRIFFITHS, ESQ., and McCUTCHEN,
OLNEY, WILLARD, MANNING & GREENE.

PROCEEDINGS.

1917.

November 12. Filed liable for damages in the sum
of \$230,000.00.

Issued monition, which was returned
and filed with the following re-
turn endorsed thereon:

"In obedience to the within Moni-
tion, I attached the Am. Str.

*Page-number appearing at foot of page of original certified
Apostles on Appeal.

“Beaver,” etc. therein described, on the 12th day of Nov. 1917, and have given due notice to all persons claiming the same that this Court will, on the 27th day of Nov., 1917 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein named Am. Str. “Beaver” and placed a keeper in charge thereof. I further return that I served a copy of this writ on the 2nd officer C. Quistguard, at the Union Iron Works at San Francisco.

J. B. HOLOHAN,
United States Marshal.

Otis R. Bohn,
Deputy.

San Francisco, Cal. Nov. 12, 1917.”

16. Filed claim of San Francisco & Portland Steamship Company, a corporation to Steamer “Beaver.”

Filed stipulation that Steamer “Beaver” may be released on the filing of admiralty stipulation in the sum of \$250,000.00

November 16. Filed admiralty stipulation in the sum of \$250,000.00. [3]

27. Proclamation duly made.
- December 15. Filed claimant's answer to libel.
1918.
- May 24. Filed deposition of Frederick Johan
Ellertsen.
- June 17. Hearing of cause. Hon. M. T. Dool-
ing, Judge, presiding.
20. Filed testimony taken in open court.
- December 18. Further hearing was this day had.
The Hon. M. T. Dooling, Judge,
presiding. Cause submitted.
Filed stipulation as to testimony of
John B. White.
Filed deposition of L. L. Richards.
Filed deposition of J. B. Smull.
26. Filed additional testimony, taken in
open court.
- 1919.
- February 4. Filed deposition of L. K. Siversen.
Filed deposition of Joseph Blackett
and Frank H. Evers.
- 1921.
- January 21. Filed deposition of Oliver Pehr
Rankin.
- September 23. Filed opinion in which it was ordered
that a decree be entered in
favor of libelant for the amount
expended for repairs only, and re-
ferring the cause to a U. S. Com-
missioner to ascertain a report
same.
- October 7. Filed interlocutory decree.

1922.

- March 3. Filed stipulation submitting to the Court certain disputed items of damage. [4]
- March 7. Filed order that final decree be entered in favor of libelant for the sum of \$58,096.15, with interest from December 21st, 1917, at 6 per cent, and cost of suit.
11. Filed final decree.
- April 17. Filed notice of appeal.
24. Filed cost bond on appeal.
- July 20. Filed assignment of errors. [5]

In the District Court of the United States in and for the Northern District of California, Division One in Admiralty.

AKTIESELSKAPET BONHEUR, a Corporation,
Libelants.

vs.

AMERICAN STEAMER "BEAVER,"

Her Tackle, Apparel, Engines, Boilers, Furniture, etc.,

Respondent.

Libel in Rem.

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States in and for the Northern District of California, Division One:

The Libel of Aktieselskapet Bonheur, a corporation, against the American Steamship "Beaver," her tackle, apparel, engines, boilers, furniture, etc.,

and all persons intervening for their interests therein in a cause of collision, civil and maritime, alleges:

I.

That at all times hereinafter mentioned Aktieselskapet Bonheur, a corporation, was and still is a corporation organized under and by virtue of the laws of the Kingdom of Norway, and at all of said times was and still is the owner of the Norwegian motor vessel "Bayard."

II.

That heretofore, to wit, on the 3d day of November, 1917, the said motor vessel "Bayard" was lying at anchor in [6] the harbor of San Francisco, opposite pier 30, and about one mile distant therefrom, and was then and there in a safe and proper anchorage, her anchor lights burning brightly and was otherwise complying with all of the rules and regulations with respect to vessels at anchor in said harbor.

III.

That on the evening of the said 3d day of November, 1917, the steamer "Beaver" left her dock at Pier 2 for a voyage from the port of San Francisco to the port of Portland, Oregon; that after backing out into the bay she was headed to the southward in which direction she proceeded ahead for the purpose of turning around in order to come upon her course down the bay toward the Golden Gate, and having straightened out on her course, the said steamer "Beaver" proceeded down said harbor, and as libellant is informed and believes, and therefore alleges, at full speed, and at 7:30 P. M.

of said day ran into and collided with the said motor vessel "Bayard." That at the time of said collision the air was clear and the lights of said "Bayard" were clearly visible from the decks of the said Steamer "Beaver," as well as from the shore upon the San Francisco side of said bay.

IV.

That said "Beaver" struck said "Bayard" on her bow, inflicting serious damage to her hull, machinery and equipments; that the bow of said "Beaver" passed under the starboard anchor chain of said "Bayard," and said "Beaver" swung along side the starboard side of said "Bayard," smashing the accommodation ladder and doing other damage. That both vessels then drifted down the bay and the anchor of the said "Bayard" fouled some wire, the nature of which this libelant is ignorant.
[7]

V.

That said collision was due to the carelessness and negligence of the officers and crew then in charge of said Steamer "Beaver."

VI.

That as a result of said collision the said "Bayard" has suffered serious damages in her hull, machinery and equipment, and the said owners will be further damaged by the detention of said vessel during the time required for her repairs, in the loss of the use of said vessel, and for incidental expenses relating to and arising out of said collision, the amount of which several damages libelant is not at present informed, but verily believes and

therefore alleges that the same will exceed the sum of Two Hundred Thousand (\$200,000) Dollars.

VII.

That the Great Western Power Co., a corporation, claims that, as a result of said collision, the anchor of said "Bayard" fouled and damaged its electrical cable lying on the bottom of the bay of San Francisco, and has preferred a claim for said damage against the said "Bayard" in the sum of Thirty Thousand (\$30,000.) Dollars.

VIII.

That the said "Beaver" is now in the harbor of San Francisco, in the Northern District of California, and within the jurisdiction of this Honorable Court.

IX

That all and singular the premises hereinbefore set forth are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE said libelant prays that process in due form of law according to the course of this Honorable Court [8] in cases of admiralty and maritime jurisdiction may issue against the said American Steamer "Beaver," her tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer, on oath, all and singular the matters aforesaid; and that this Honorable Court would be pleased to decree the payment of the said sum of Two Hundred and *Thirty* (\$230,000) Dollars, together with interest and costs to this liability, and that said vessel

may be condemned and sold to pay the same; and that this liability may have such other and further relief as in law and justice it may be entitled to receive.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Libelant.

State of California,
City and County of San Francisco,—ss.

Fritz S. Olsen, being first duly sworn, on oath deposes and says:

That he the manager of the firm of Fred Olsen & Company, managers of Aktieselskapet Bonheur, a corporation, libelant herein; that he has read the foregoing libel, knows the contents thereof and that the same is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

FRITZ S. OLSEN,

Subscribed and sworn to before me this 12th day of November, 1917.

[Seal] M. I. LAWRENCE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires January 27th, 1918.

[Endorsed]: Filed Nov. 12, 1917. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [9]

[Title of Court and Cause.]

No. 16, 303.

Answer.

To the Honorable the Judges of the United States
District Court for the Northern District of
California:

The answer of the San Francisco & Portland Steamship Company, a corporation, claimant herein, to the libel of Aktieselskapet Bonheur, a corporation, libellant herein, admits, denies and alleges, as follows:

I.

Claimant is unadvised as to the truth or falsity of the allegations of article I of said libel, and for that reason denies the same, and demands that strict proof thereof be made.

II.

Answering unto the allegations of article II of said libel, claimant admits that heretofore on the 3d day of November, 1917, the said motor vessel "Bayard" was lying at anchor [10] in the harbor of San Francisco, approximately opposite pier 30, and about one mile distant therefrom, and admits that she was then and there in a proper anchorage, but denies that her lights were burning brightly. Claimant is unadvised as to whether said "Bayard" was otherwise complying with all of the rules and regulations with respect to vessels at anchor in said harbor, and for that reason denies the same, and demands that strict proof thereof be made.

III.

Answering unto the allegations of article III of

said libel, claimant admits that on the evening of said 3d day of November, 1917, the steamer "Beaver" left her dock at pier 30 for a voyage from the port of San Francisco to the port of Portland, Oregon, and admits that after backing out into the bay she was headed southward in which direction she was proceeding for the purpose of turning around in order to come upon her course down the bay toward the Golden Gate, and admits that having straightened out on her course the said "Beaver" proceeded down said harbor, and admits that at about 7:30 P. M. of said day, said steamer ran into and collided with said motor vessel "Bayard," but claimant denies that at the time of said collision said steamer "Beaver" was proceeding at full speed. Claimant denies that at the time of said collision the air was clear, and that the lights of said "Bayard" were clearly visible from the decks of said steamer "Beaver," and denies that they were visible from the shore upon the San Francisco side of said bay. Except as herein expressly admitted, claimant denies each and every of the remaining allegations of said article. [11]

IV.

Answering unto the allegations of article IV of said libel, claimant admits that said "Beaver" struck said "Bayard" on her bow, inflicting serious damage to her hull, but denies that any serious damage was inflicted to the machinery or equipment of said "Bayard." Claimant admits that the bow of said "Beaver" passed under the anchor chain of said "Bayard" and that said "Beaver"

swung along the starboard side of said "Bayard," but as to whether she smashed the accommodation ladder and did other damage as in said article alleged claimant is unadvised, and for that reason denies the said allegation, and demands that strict proof thereof be made. Claimant admits that both vessels then drifted down the bay, but denies that the anchor of said "Bayard" fouled any wire.

V.

Claimant denies each and every of the allegations of article V of said libel.

VI.

Answering unto the allegations of article VI of said libel, claimant admits that as a result of said collision said "Bayard" suffered serious damages to her hull, but denies that she suffered any damage to her machinery and equipment. Claimant denies that the owners of said "Bayard" will be or were further damaged by the detention of said vessel during the time required for her repairs in the loss of the use of said vessel, but is ignorant as to whether said owners would be further damaged for incidental expenses relating to and arising out of said collision as in said article alleged. Claimant denies, however, that the damages resulting from said collision amounted to the sum of Two Hundred Thousand (200,000) Dollars or anywhere near [12] that amount. Except as herein expressly admitted, claimant denies each and every of the remaining allegations of said article.

VII.

Claimant is unadvised as to the truth or falsity of the allegations of article VII of said libel, and

for that reason denies the same, and demands that strict proof thereof be made.

VIII.

Claimant admits the allegations of article VIII of said libel.

IX.

Answering unto the allegations of article IX of said libel, claimant denies that all and singular the premises thereinbefore set forth are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

IRA A. CAMPBELL,
McCUTCHEM, OLNEY & WILLARD,
Proctors for Claimant.

[13]

State of California,
City and County of San Francisco,—ss.

G. L. Blair, being first duly sworn, deposes and says:

That he is an officer of the San Francisco & Portland Steamship Company, claimant herein, to wit, the manager thereof, and makes this verification for and on behalf of said claimant; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

G. L. BLAIR,

Subscribed and sworn to before me this 13th day of December, 1917.

[Seal] FRANK L. OWEN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Receipt of a copy of the within answer is hereby admitted this 13th day of December, 1917.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Libelant.

Filed Dec. 15, 1917. W. B. Maling, Clerk. By
C. M. Taylor, Deputy Clerk. [14]

[Title of Court and Cause.]

No. 16,303.

Testimony Taken in Open Court.

Monday, June 17, 1918.

Counsel Appearing:

For the Libelant: NATHAN H. FRANK, Esq.

For the Respondent: FARNHAM T. GRIFFITHS, Esq.

Mr. FRANK.—If your honor please, this is a case of collision. The steamer "Bayard" was lying at anchor off the wharves in San Francisco Bay here on the evening of November 3d, and the "Beaver" on her way out collided with her and injured her very seriously. The respondent has agreed to admit liability, and there are two questions involved after we have the admission of liability. When the amount of the damages to be allowed for the collision and for the repairs, I mean, and the attendant expenses, and the other is the question of demurrage. Now, with [15] reference to the first, as I understand, Mr. Griffiths, the chances are that we will be able to get together on

that and you no not care to submit anything upon that proposition at this hearing?

Mr. GRIFFITHS.—That is right.

Mr. FRANK.—The principal question is whether or not we shall be allowed demurrage during the time that the vessel was delayed by reason of the repairs, and at what rate—how much.

Mr. GRIFFITHS.—I would say just this, your Honor, that in respect to the physical damages, as Mr. Frank has correctly stated, I do not think there will be any serious dispute. We do reserve this point: There is an agreement between the parties that the repairs should be made by the Union Iron Works, and that the repairs, if so made, should be without question at the cost or time, if made at the going costs and going time by the Union Iron Works.

The COURT.—The repairs have not yet been made?

Mr. GRIFFITHS.—They have been made, under that letter, but no overtime was employed, except I think for Sundays and perhaps one evening. Now, our point is this, that if this vessel was, as the libelant claims, free to sail and had up to her a charter, which was worth something like \$4000 a day, then overtime should have been used upon the repairs to the vessel. If, however, the claim for demurrage applies, there will be no question at all about the bills of the Union Iron Works for the repairs. However, that awaits the determination of the demurrage. Our point is that the vessel was not free to sail from November 3d to December

21, during which time she was under repairs, and even if free to sail was not free to sail under the charter, which I understand Mr. Frank proposes to prove.

Mr. FRANK.—We first offer in evidence the agreement of which Mr. Griffiths has spoken, and I will read that for your Honor's information.

“November 8, 1917.

“Nathan Frank, Esq., Merchants Exchange Building, San Francisco, [16] California. Dear Sir: “—I wish your Honor to remark the language in this, because this question of overtime or not overtime might be absolutely determined by this agreement. By the way, I want to offer the suggestion at this time that it is our view with regard to the question of overtime that these parties are foreclosed, not only by the agreement, but by the fact that they never made any suggestion of using overtime during the repairs. It was agreed between us that we would each have our surveyors, two surveyors, and each would get together and agree upon the specifications and the repairs that were to be made, and those surveyors on behalf of the respondent in this case went down there and were in attendance all the time; they knew what was going on. If there was any question that they were not repairing in a way agreeable to them it should have been raised then; but aside from that, we are relying upon the language of that agreement and what we contend is the proper interpretation of that language, an agree-

ment upon their part for straight time. Now, I will continue:

“If the repairs to the ‘Bayard’ of the injuries resulting from her collision with the steamer ‘Beaver’ are repaired by the Union Iron Works Company on the basis of time and materials at going rates, the owners and underwriters of the ‘Beaver,’ if that vessel is ultimately held liable for the collision, will not question the propriety of that method of repair. This is entirely without prejudice to the question of liability for the collision.

To further eliminate as far as possible controversy over the character of repairs to be made, we suggest that it would be well to permit the surveyors for the owners and underwriters of the ‘Beaver’ to join with the surveyors for the owners and underwriters of the ‘Bayard’ in preparing specifications for the repairs. This, also, is without prejudice to the question of liability for the collision. Respectfully yours, San Francisco & Portland Steamship Company, by G. L. Blair, General Manager.” [17]

I will ask to have that marked as an exhibit in the case.

(The document is marked Libelant’s Exhibit 1.)

Testimony of Duval Moore, for Libelant.

DUVAL MOORE, called for the libelant, sworn.

Mr. FRANK.—Q. Mr. Moore, what is your business?

A. Vice-president of George A. Moore & Co.

(Testimony of Duval Moore.)

Q. What is the nature of the business that they are engaged in or were engaged in in the latter part of 1917?

A. General merchants, shipping and commission.

Q. Were you chartering vessels at that time for carrying merchandise for you? A. We were.

Q. Do you know the motor ship "Bayard"?

A. I do.

Q. And the owners named in here? A. I do.

Q. Did you have any negotiations with them just prior to November 3d with respect to the chartering of the motor ship "Bayard?"

A. I had chartered her for two trips previous to that, and I was trying to get her for a third trip, and had negotiated quite a bit with the owners.

Q. Now, you say you had chartered her for two trips. She had just returned from a trip for you?

A. Yes.

Q. And just finished discharging her cargo that afternoon on November 3d?

A. I could not be positive as to dates. I have not refreshed my mind on the matter at all.

Mr. FRANK.—Will you agree, Mr. Griffiths, that is what she had done? She had discharged her cargo that afternoon and had dropped out into the stream two hours before the collision. That I understand to be the fact.

Mr. GRIFFITHS.—If you say it is the fact, all right; I don't know.

Mr. FRANK.—Q. What, if any, offer did you

(Testimony of Duval Moore.)

make to them [18] at that time for the charter of the vessel, and for what voyage?

A. I offered them \$400,000 for a round trip from San Francisco to two points in the Philippines and return to San Francisco.

Q. Two ports in the Philippines? A. Yes.

Q. State whether or not that offer was under consideration at the time the collision occurred?

A. I was told that they had to cable to Norway on it, and they were considering it, and I was told that I would have the first chance at the vessel.

Q. You were awaiting a reply from the owners at that time? A. I was.

Q. That was a voyage charter, was it?

A. A round trip charter.

Q. A voyage charter? A. Yes.

Mr. FRANK.—That is all.

Cross-examination.

Mr. GRIFFITHS.—Q. That is what you would call a lump-sum charter, was it not—a lump sum of \$400,000? A. Yes.

Q. Now, that charter would have to be submitted to the United States Shipping Board for approval before the vessel could sail, would it not?

A. I believe that at that time, or sometime along about then, these charters had to be submitted to the United States Shipping Board.

Q. You contemplated that this charter would have to have the approval of the United States Shipping Board, did you not?

(Testimony of Duval Moore.)

A. Oh, yes. My offer was, of course, subject to approval of whatever authorities were necessary.

Q. Do you happen to know whether or not the shipping board at that time would approve a lump sum charter of any kind? A. I believe they would.

Mr. FRANK.—Oh, well, I object to that.

Mr. GRIFFITHS.—But you don't know?

A. I would like to [19] refresh my memory from someone who is in court, about dates. I want to ask Mr. Page if I did not charter the "Kina" after that.

Mr. GRIFFITHS.—Very well.

Mr. PAGE.—The 27th of November.

A. They would have approved lump-sum charters, because they did approve them afterwards.

Mr. GRIFFITHS.—Q. Was the "Kina" a lump-sum charter? A. Yes.

Q. Do you know the rates at which they were approving time charters?

A. No. As a matter of fact, we could not get definite information out of the shipping board; there were no rules at that time. They seemed to be pretty liberal at that time about approving charters.

Q. What is the dead weight tonnage of the "Bayard," do you know?

A. I could not tell you that.

Mr. GRIFFITHS.—What is it, Mr. Frank, will you tell me?

The WITNESS.—I know her cubic; that is what I was interested in.

(Testimony of Duval Moore.)

Mr. KUTTER.—5200 dead weight tonnage.

Mr. GRIFFITHS.—Is that agreed to?

Mr. FRANK.—About that.

Mr. GRIFFITHS.—Q. Didn't you know, Mr. Moore, before that vessel could sail under your charter, being a neutral vessel, you had to have a permit for bunkers from the War Trade Board?

A. Those questions had not become acute; we did not consider them in shipping; it was after that that most of these rules and regulations that I have run into were made.

Q. Do you think you could have got bunker fuel at that time without application to the War Trade Board?

A. I did not have any apprehension about that. We had gotten it before, and the question had not come up. I think there was no question but that the charter would have been approved. [20]

Q. How many days would that proposed trip have consumed, the round trip, to two ports in the Philippines and return to San Francisco?

A. I could not tell you definitely on that. I was not interested in the time element, seeing it was a lump sum; the captain could tell you better about that; she made a similar trip for me before, so you could take that as pretty close.

Q. How long did it take her on the previous trip?

A. I don't remember that; something under three months; quite a bit under three months.

Q. Under the terms of this proposed charter

(Testimony of Duval Moore.)

party, was the ship owner to pay all the expenses of loading and discharging? A. Yes.

Q. And crew? A. Yes.

Q. Port charges? A. Yes.

Q. Did you have a form of lump-sum charter before you when you were negotiating?

A. Oh, yes, we had the previous charter; it would have been similar to the previous charter.

Mr. GRIFFITHS.—Have you got that previous charter, Mr. Frank?

Mr. FRANK.—No, I have not.

Mr. GRIFFITHS.—Have you got it, Mr. Moore?

A. Not with me.

Q. I mean, can you get it? A. Yes.

Q. Can we have that this afternoon?

Mr. FRANK.—If we have it, you can have it.

Mr. GRIFFITHS.—That is all.

Testimony of Arthur Page, for Libelant.

ARTHUR PAGE, called for the libelant, sworn.

Mr. FRANK.—Q. Mr. Page, your business is that of a ship broker? A. Yes.

Q. You have been engaged in that business for a great many years here in San Francisco?

A. Yes.

Q. And during the period here in question, you have been constantly [21] engaged in chartering vessels? A. Yes.

Q. Out of the port of San Francisco, and for round voyages, etc.? A. Yes.

(Testimony of Arthur Page.)

Q. Now, there are different kinds of charters, are there not, Mr. Page? A. Yes, there are.

Q. There is what we call a time charter, so much per month? A. Yes.

Q. There is a lump-sum voyage charter?

A. Yes.

Q. And there is a measurement voyage charter, measuring the weight; that is so much per ton?

A. Delivered, yes.

Q. And those are three different modes of chartering and employing vessels out of the port?

A. Yes, those are the principal ones.

Q. Now, did you charter any vessels subsequent to November 3d, or about November 3d—during that period? This vessel was detained from November 3d to December 21. Did you charter any vessels out of this port during that period?

A. Yes.

Q. On what kinds of charters?

A. Lump sum, principally, and one on time charter.

Q. One on time charter? A. Yes.

Q. In your particular business—

A. I beg pardon, I did charter some per ton delivered.

Q. That was what I was going to ask you about. During that time, was there any interference on the part of the Government preventing chartering of vessels?

A. The first record I have on my books is November 27th.

(Testimony of Arthur Page.)

Q. November 27th? A. Yes.

Q. What was that?

A. The steamer "Peru" was the first charter in which we inserted the clause "this charter is subject to the approval of the Government of the United States or the United States Shipping Board." [22]

Q. That was when the Government began, according to your experience, to require charters to be submitted to them for their approval?

A. Yes.

Q. Were there any particular class of charters that would or would not be approved? A. No.

Q. There was no fixed rule about it even then?

A. No.

Q. It depended upon the discretion of the chartering board. A. Yes.

Q. And the particular necessities of the Government at that particular time. Is that right?

A. The way they wished the charter was put before the shipping board, and they simply approved or did not approve. It was the charter and owners who agreed on the mode of chartering.

Q. When was it that the Government first began making general rules with respect to the chartering of vessels out of this port?

A. My own experience is about November 26th or 27th, around there.

Q. That was one instance where they intimated their preference, but I mean now their having it upon a different basis. When did that first begin?

A. That I can't remember.

(Testimony of Arthur Page.)

Q. It was away past this period, was it not?

A. They made arbitrary rates from Manila over about that time.

Mr. GRIFFITHS.—Q. About what time?

A. About November or December.

Q. Early in November?

A. Along about the end of November or December.

Mr. FRANK.—Q. What were the going rates for voyage charters for a round trip from San Francisco to Manila and return that the Government had allowed after they began allowing it—at that time, what were the going rates?

A. The going rates I consider were \$20 out and \$50 back; \$70 on the round trip.

Q. \$70 on the round trip? A. Yes. [23]

Q. Upon what basis?

A. On the vessel's dead weight of cargo.

Q. Dead weight of cargo? A. Yes.

Q. Now, in a case where an owner discharged and put the vessel into berth himself for cargo, did the Government interfere in that at all?

A. No, I do not think so.

Q. Under those circumstances, was there any rate that the Government indicated, or could they get what was the going rate?

A. They could get the going rates. The berth rate was the last thing interfered with, and that was only lately.

Q. With reference to the demand for ships at that time, what have you to say?

A. There was a very strong demand.

(Testimony of Arthur Page.)

Q. With reference to the freight rates, why they were high, why they were going up or going down, what was the situation?

A. The freights, before they were interfered with, were very high, and they would very likely have gone higher.

Q. Would have gone higher? A. Yes.

Q. Of course the men who chartered the vessel, as, for instance, Mr. Moore, who put her on the berth, would make these rates. That was the fact, was it not? A. Yes.

Q. The charterers were doing that? A. Yes.

Q. And the Government was not interfering with the amount that they could receive?

A. On the berth, no.

Q. They were doing it for profit?

A. They were getting a profit at that time, yes.

Q. With reference to cargo demands at this time, looking for ships, was it very plentiful? Was there more cargo than ships could carry? A. Yes.

Q. Both ways? A. Yes.

Q. You handed me a list, Mr. Page, of ships that were chartered by you. Is it a list during this period? A. Yes.

Q. And which the Government approved?

A. When the time came [24] for approval, when the date was reached when they required approval, they are there marked.

Q. I am not interested in those that preceded it, but I notice here you have November 27th, December 7th, December 13th and December 27th, some

(Testimony of Arthur Page.)

vessels mentioned here. Just use that to refresh your recollection, Mr. Page. It is a memorandum made from your own books, is it?

A. Yes, from our charter book.

Q. That first one, November 27th, that was a lump-sum charter? A. A lump-sum charter.

Q. How much was the charter for?

A. \$345,000.

Q. The size of the vessel?

A. 6,900 tons dead weight of cargo.

Q. What was the nature of the voyage?

A. From Hong Kong and or Manila to San Francisco.

Q. One way? A. One way.

Q. \$345,000? A. Yes.

Q. That would amount to how much a ton?

A. \$50 a ton.

Mr. GRIFFITHS.—May I interrupt just a minute: Is that a charter from the other side to here and back again?

A. No, just coming over.

Q. Coming over to here? A. Yes.

Mr. FRANK.—Q. That would amount, for a round trip, to about \$690,000, would it not, assuming that the round trip was on the same basis?

A. About \$450,000 or \$460,000; that is, it is based on what I said before to you, of \$70 for the round trip.

Q. You mean assuming that she would only get \$20 going back? A. Yes.

The COURT.—Why the difference in rates?

(Testimony of Arthur Page.)

A. The call was tremendous from that side to here.

Q. More than from here there?

A. Yes, and therefore the Government allowed this rate to be paid. [25]

Mr. FRANK.—Q. What was the next one?

A. The next one was the Danish steamer "Kina," 8000 tons dead weight, \$400,000 lump sum, Manila to San Francisco.

Q. Just one way? A. Yes.

Q. That was a lump-sum charter? A. Yes.

Q. What was the next one, and the date?

A. These two I mentioned were the 27th of November. The next one is the 7th of December, the Danish mother boat "Peru."

Q. What was the voyage?

A. She received, from two ports in the Philippines, to San Francisco, a lump sum of \$500,000.

Q. What was her size?

A. She is 9,700 tons dead weight. This shows more than \$50 a ton on 9700 tons, but because she loaded at two ports, the Government approved \$15,000 more as a lump sum—because there were two ports of loading.

Q. And the other two are from here over?

A. The other two are from here over, and then we put in the charter right along "subject to approval."

Q. What date was that?

A. That was the 15th of December, the "Ataka

(Testimony of Arthur Page.)

Maru," \$20 on the vessel's dead weight cargo capacity, per ton.

Q. What date is the next one?

A. The next one is December 27th. The "Ataka Maru" was from San Francisco to Yokohama and Kobe, \$20 per ton on vessel's dead weight cargo.

Q. You say where she touched at two ports, the shipping committee were inclined to increase the amount of the charter hire?

A. Yes, they did; they allowed that.

Q. I understand you that previous to November 27th there was no interference at all?

A. As far as my knowledge goes.

Q. You are one of the largest chartering firms on the coast, are you not? A. Yes.

Q. Have been for years? A. Yes. [26]

Q. If anybody knew about it, you would be sure to know about it? A. Yes, I think so.

Mr. FRANK.—That is all.

Cross-examination.

Mr. GRIFFITHS.—May I look at that list, please?

A. Yes.

Q. Take November 27th. You refer to two vessels, Mr. Page. A. Yes.

Q. One was the Danish steamer "Transvaal" and the other the Danish steamer "Kina"? A. Yes.

Q. Those were both lump sum charters?

A. Yes.

Q. The voyage began in each case on the other side, did it not?

(Testimony of Arthur Page.)

A. They had gone from this side over.

Q. I mean, this charter was, according to your notes here, Danish steamer "Transvaal" 6900 tons, dead weight, \$345,000, lump sum, Hong Kong and or Manila to San Francisco? A. Yes.

Q. Now, in the case of the Danish steamer "Kina" it was \$400,000 lump sum Manila to San Francisco, was it not? A. Yes.

Q. Now, isn't it the fact that the Shipping Board might very well be interfering with a charter from this port out on a neutral vessel when it would not be interfering with a neutral vessel coming back to this country, which was the very thing that the Shipping Board desired?

Mr. FRANK.—That is a sort of question, if your Honor please—what the shipping board might or might not have done is scarcely up to this witness. That is an argument that you are suggesting now.

Mr. GRIFFITHS.—He is an expert on these lines. My point is that the very agreement that the people had to sign to get bunker coal is an agreement to return to this port, and why should they interfere with a vessel which is coming to this port?

Mr. FRANK.—But we went out again. [27]

The COURT.—If he knows whether the Shipping Board were making any distinction between vessels leaving here and vessels coming here he may state it.

A. From a certain date the charters from this side over had to be approved.

(Testimony of Arthur Page.)

Mr. GRIFFITHS.—Q. When did that date of approval of charters from this side begin?

A. I cannot tell you exactly. The shipping board ought to be able to tell you that; but my charters show you where I commenced. I have two charters there on the other side.

Q. Those had reference to the other side?

A. No.

The COURT.—No, two later charters.

Mr. GRIFFITHS.—On the next page?

The COURT.—Yes.

Mr. GRIFFITHS.—Q. Did you have any cases that would bring the question to an issue earlier than that?

A. No. The charters were made before those dates, there was nothing of that sort required.

Q. Have you got any charters that you can furnish us with of neutral vessels from San Francisco out prior to November 27th?

A. Yes, on top there.

The COURT.—If I get your suggestion, Mr. Griffiths, the requirements was that they go and return. I understand this was a charter to go and return.

Mr. GRIFFITHS.—Yes, to go and come back and discharge.

The COURT.—I understand that was the proposed charter in the present case, to go to Manila and come back, so that really does not make much difference, does it?

(Testimony of Arthur Page.)

Mr. GRIFFITHS.—Except this, if your Honor please, that I have been informed—and I am going to ask the privilege of taking the deposition of a member of the chartering committee— [28] the chartering committee had the approval of these, hadn't they, Mr. Page?

A. We had to telegraph to Washington.

Mr. GRIFFITHS.—I am advised that the chartering committee of the United States Shipping Board, and I think that the members of the committee will so testify, that they would not have approved any lump-sum charter between November 3d and December 21st, or before or after those dates, and I am somewhat puzzled by the testimony.

Mr. FRANK.—The best way to prove that is to show what they did on those dates. The records will show what they did. If there is any desire to take their testimony on that subject I am willing to join with you on it.

Mr. GRIFFITHS.—Yes, I want to do it.

Mr. FRANK.—We want the facts. What they would or would not have done in other instances is entirely immaterial. The question is what treatment we would have had at this port, and that is shown by what they did.

Mr. GRIFFITHS.—As to the vessels here, Mr. Page, prior to November 27th, are the dates those of the charters, or the dates of the commencement of the loading?

A. The date of the charter. I have taken them right from our books.

(Testimony of Arthur Page.)

Q. And it would be for immediate loading?

A. If you will name the ships I think I can tell you.

Q. Take the Danish steamer "Kina," the 4th of November, 1917—no, that is from the Philippines to San Francisco. That is the other way.

A. Yes.

Q. The first one here out of San Francisco is the Danish steamer "Arabien."

A. She was on the spot, the "Arabien." That is as far as my recollection goes. I can verify that from the charter, of course. [29]

Q. Wasn't the charter of the "Arabien" submitted to the Shipping Board and approved by it?

A. Not so far as I know.

Q. Would you know for certain whether it was?

A. I was away at the time. I had talks on the ship before, and although the negotiations were closed without me, I was to make out the charter as soon as I came up from the south.

Q. Who was she chartered to?

A. To the American-Asiatic Company.

Q. The "Dicto," on the 20th of November, Seattle to the Orient and return, via Panama Canal. That was a time charter? A. A time charter.

Q. And the rate I notice here is 45 shillings Sterling per ton total dead weight?

A. 45 shillings Sterling.

Q. Do you know whether that was submitted to the shipping board?

A. That was the first vessel which was ordered

(Testimony of Arthur Page.)

to, or was only allowed 45 shillings Sterling; she was getting more money before, and the Government interfered there and made her accept 45 shillings.

Q. Isn't it a fact that that is the highest amount allowed on time charters by the shipping board then and since then, 45 shillings, dead weight tonnage?

A. It has been lowered since then.

Q. To what? A. To 35 shillings.

Mr. FRANK.—That was confined to a time charter? A. Yes; just a few vessels.

Mr. GRIFFITHS.—Q. The last lump-sum charter prior to November that you have here is October 13, which is the American Auxiliary Steamer "Erris." Then you have no lump charter until November 27th. A. Yes.

Q. So there is nothing from your records here to indicate whether the shipping board was or was not requiring approval of lump sum charters as of November 3d, is there?

A. No, there is nothing there.

Q. Do you, as a matter of fact, know whether or not approval [30] would have been required for a lump-sum charter early in November?

A. No, I do not know.

Q. I mean from your experience.

A. No, I had no occasion to find out, not from my knowledge.

Q. Even this lump sum charter on the "Erris" of October 13th is on an American vessel, not a neutral vessel, at all? A. Yes.

Q. So the situation might be utterly different?

(Testimony of Arthur Page.)

A. Yes. I gave all the charters that we had in our books.

Q. In your whole list, you have not any Norwegian vessel prior to November, have you?

A. The "Dicto" is Norwegian.

Q. But that was a time charter? A. Yes.

Q. And it was at that 45 shilling rate, which was a rate that the shipping board allowed?

A. Yes.

Q. Do you know anything about the charter of the "Thordis," a lump sum charter, or proposed charter, for the trans-Pacific round trip of \$120,000 a month?

A. Yes. I had nothing to do with it.

Q. Do you know that a charter was proposed on her on September 18, 1917?

A. No, I don't know the date.

Redirect Examination.

Mr. FRANK.—Q. Mr. Page, notwithstanding that you had no occasion to charter any vessels during the interim just inquired of you by Mr. Griffiths, in your business don't you keep in touch with all of the business that is going on in this port?

A. We try to, yes.

Q. Don't you keep in closer touch with the local shipping board, and find out their rules and regulations and what they are doing?

A. It is very hard to find out what they are. They won't give you anything in writing; it is very indefinite.

(Testimony of Arthur Page.)

Q. But such information as they had then, you kept in touch with it, did you not? A. Yes. [31]

Q. As I understand it, they themselves did not know what they were doing; their organization was imperfect and they were in no shape to handle business, really: Isn't that the fact?

A. Naturally, with the tremendous business that was thrown on their shoulders, and the difficulty they had with other owners and other Governments, it kept them in hot water all the time.

Q. They are just now really getting into shape: Isn't that the fact?

A. Since the end of last year, they have begun to get things down and make them arbitrary.

Q. Previous to that, if they did interfere, there was not any rule of action at all; in one case they might and in another case they might not?

A. We never knew from the shipping board here, for instance, what was really the requirements. We always had to telegraph to Washington, and when I say "we"—the shippers, like Mr. Moore, or the owner, would be the ones that would do the cabling; the brokers did not do it.

Q. But at any rate there was no fixed rule; sometimes they would do it and sometimes they would not?

A. No, not after they commenced; not after they gave the rate as \$20 from and \$50 back.

Q. Up to that time—that was subsequent to this period?

(Testimony of Arthur Page.)

A. Up to that time I don't think there was anything very definite.

Q. That was subsequent to this period when they began to make a regular rule, was it not?

A. About the 27th of November was when we commenced to find out definitely.

The COURT.—What charter was finally made of this vessel when she did come off the drydock?

Mr. FRANK.—When she did come off, she was then in the hands of the Government, and I don't know just what it was; I think it was 45 shillings. I think that is what it finally resulted in.

Mr. GRIFFITHS.—Not 45 shillings, was it? As a matter of [32] fact, you came off the dock on December 21st and did not sail till the middle of January. That is, your repairs were completed December 21.

Mr. FRANK.—Yes, I understand that. By that collision you disorganized the entire business; it very naturally followed.

Mr. GRIFFITHS.—Let us have this clearly understood: These approvals of charters were not done here by the local office of the shipping board at all, were they? A. No.

Q. So all the talk about the disorganization here had nothing to do with that feature of the situation?

A. No.

Q. The approval was submitted to the shipping board at Washington? A. Yes.

Q. It was approved there by the chartering committee, or disapproved? A. Yes.

(Testimony of Arthur Page.)

Q. And the local board here, as soon as there were fixed rules, they had the administration of them, did they not?

A. The approval always came from over there by telegraph.

Q. You could find out here what the fixed rules were when they were initiated, couldn't you?

A. I presume so, yes.

Q. That is all I am trying to get at. Didn't they simply refer you East if you made inquiries?

A. Unless they became known. We have cases in point now, where the rates are given on case oil to Manila and New Zealand and Australia; we can get those through Mr. Cook absolutely now. But three or four months ago we could not do it.

Q. They simply referred you East? A. Yes.

Q. So that the information as to what the rules were at that time would have to come from the headquarters of the shipping board? A. Yes.

Mr. FRANK.—Q. If there were any rules?

A. Yes.

Mr. GRIFFITHS.—They could tell you if there were any? [33]

A. The disposition of everything came from there.

Testimony of E. Bryn, for Libelant.

E. BRYN, called for the libelant, sworn.

Mr. FRANK.—Q. Captain, you are the master of the "Bayard"? A. Yes.

Q. And were at the time of the collision?

A. Yes.

(Testimony of E. Bryn.)

Q. You are familiar with this agreement that I read to the Court? A. Yes.

Q. Acted under it? A. Yes.

Q. And at that time you were representing the Respondents in this case?

A. Mr. Blackett and Mr. Evans.

Q. Were they present during the entire time of the repairs?

A. They were there all the time.

Q. Now, what, if anything, did you do with regard to consulting them as the repairs went along, as to the manner in which they should be made, the nature of the repairs, etc.?

A. I kept them fairly acquainted with the repairs as they were going on, and both of these men were down at the Union Iron Works, where they had their work at the same time in other ships as well, and they came down and looked at my ship once in a while.

Q. During that time, was any suggestion made by either of them that the repairs were not proceeding in the manner in which they desired or which was most beneficial to the parties?

A. No, there were no remarks made.

Q. So far as you were concerned, how were they proceeding with it—with diligence or otherwise?

A. Yes, we were going on as energetically as possible, and always working in conjunction with the "Beaver" people; they always had the say in the matter; we allowed them to go over there and

(Testimony of E. Bryn.)

check up everything, all of the amounts and everything. [34]

Q. In other words, you were proceeding upon the assumption that they were going to pay the bills and they should have the say as to how the repairs should be made? A. Yes.

Q. Subject, however, to the fact that she must be thoroughly repaired? A. Yes.

Q. When were the repairs completed?

A. I can't remember exactly; I think it was the 21st of December. I would not say the exact date, but I have an extract from the log that will show that.

Q. You gave me a memorandum signed here by yourself and the officers: Is that the proper date there? A. Yes, December 21, that is correct.

Q. The collision occurred on November 3d?

A. Yes.

The COURT.—Q. When were the repairs completed? A. December 21st.

Mr. FRANK.—Q. Now, during the time that these repairs were being made, did you retain your crew? A. Yes, we had to retain the crew.

Q. You say you had to retain them? A. Yes.

Q. How were they shipped originally?

A. Some of these men were shipped from home for a period of two years.

Q. Were any of them shipped otherwise?

A. Some of them were shipped to follow the vessel on the round trip.

Q. On which round trip?

(Testimony of E. Bryn.)

A. From the United States back to the United States.

Q. She had just completed one trip, had she not?

A. Yes.

Q. Were those retained?

A. Some of them were retained.

Q. They were retained? A. Yes.

Q. Why?

A. Because we must have skilled men on a ship of that class; we could not allow the Union Iron Works to have anything to do with our engines; because it was a special type of engines; it is a Diesel engine, and that engine is not well known in this country; we only allow our men to take it to pieces and put it back again. [35]

Q. Was there anything necessary to be done to ascertain whether or not the collision had effected the engines?

A. In our opinion there was, because the shock was so strong that one of the men who was aft was thrown out of his bunk at the time of the collision, and both the chief engineer and myself insisted upon having the engines thoroughly overhauled and opened up; so we had to go to that expense and do it.

Q. What was the nature of the injury that you apprehended from that shock?

A. Some cracks or something thrown out of place.

Mr. FRANK.—There is no question, Mr. Griffiths, but what the “Beaver” was going full speed up to just a few minutes before the collision?

(Testimony of E. Bryn.)

Mr. GRIFFITHS.—She was going full speed before—she was going against a strong ebb tide.

Mr. FRANK.—Going with it—that was the trouble.

Mr. GRIFFITHS.—I mean she backed out.

Mr. FRANK.—I simply want to get that it was a very severe concussion; it was a very severe blow.

Q. Now, subsequently, you made a trip with this vessel to Manila and back, did you not?

A. No; I took charge of the vessel on the first of November.

Q. I mean since the collision.

A. Since the collision I have made one voyage to Australia and back, to Sydney.

Q. What was the length of that voyage as compared with the voyage from here to Manila and back?

A. That Australian voyage should be longer than the Manila time.

Q. About how much longer?

A. About ten or twenty days longer.

Q. How long did it take you to make the voyage from here to Australia and back?

A. It took us about 101 days from the time we started to load—105 days from the time we started to load until we were discharged here.

Q. Until you were discharged here?

A. Yes; that is when the [36] voyage was completed.

Q. The round trip? A. The round trip, yes.

Q. How many ports did you make?

(Testimony of E. Bryn.)

A. We made two ports, Melbourne and Sydney.

Q. In your opinion, a trip from here to the Philippines, touching at two points, and return, would take how long?

A. About 80 or 85 days—between 80 and 90 days.

Q. What is the dead weight cargo capacity of the “Bayard”?

A. The dead weight capacity is 5200 tons, but I want to remark this vessel has got an exceedingly large cubic capacity, which, of course, would play a very important thing when the vessel is chartered, because we can carry such an amount of light cargo, much more than what the ordinary vessel does.

Q. Do you think that she would command a better rate than an ordinary vessel, based upon a dead weight cargo capacity? A. Yes.

The COURT.—For light cargo?

A. For light cargo; as Mr. Moore remarked, he was counting on the cubic capacity.

Q. What is the cost of running that vessel per day, that is for crew, fuel, stores and all the things that are necessary for the running of the vessel?

A. It is about \$260 per day.

Q. \$260 per day? A. Yes.

Q. That is outside—

A. That is what I pay out.

Q. That is what you pay? A. Yes.

Q. That is what it ran back and forth on this last trip, was it not?

A. Yes, outside of insurance, taxes, etc.

Q. Outside of any expense that might be neces-

(Testimony of E. Bryn.)

sary for the loading and discharging of cargo and port fees and such as that?

A. The actual running of the vessel—the actual running expense of the vessel.

Q. Are what? A. \$260 per day.

Cross-examination.

Mr. GRIFFITHS.—Q. You say that does not include port charges?

A. No, that is just running the vessel while it is going. [37]

Q. Does it include the expense of loading and discharging the cargo?

A. No; I can't count those in because they are more or less different; it depends on the voyage.

Mr. FRANK.—We will give you those.

Mr. GRIFFITHS.—We will have to get the cost of those.

Mr. FRANK.—We will give you those.

Mr. GRIFFITHS.—Q. Captain, you have just returned, as you say, from a voyage to Australia?

A. Yes.

Q. Under charter to whom?

A. Well, I have been on two voyages; the one you are referring to now, the Australian voyage, was made just after we were repaired. I have been on a voyage in the meantime—that was McNear & Co. that we were chartered to.

Q. Was that the voyage immediately succeeding the accident? A. Yes.

Q. What was the rate there? Was it a time charter you were under?

(Testimony of E. Bryn.)

A. It was a time charter, yes; it was at the prevailing Government rate at the time.

Q. That charter was approved by the shipping board, was it not? A. Yes.

Q. Do you know what the rate was?

A. I don't remember that, exactly.

Mr. FRANK.—We will give you that.

A. You can get it from the charter party.

Mr. FRANK.—We do not consider that material, but you can have that if you want it.

Mr. GRIFFITHS.—Q. Before you sailed you had to have a permit for bunkers, didn't you?

A. Yes. All those things are outside of my jurisdiction. What I do is navigate the vessel, and I get all those papers submitted to me, and I have nothing to do with that.

Q. Didn't you sign the agreement yourself, sign an agreement before you left this port with that vessel, to return to San Francisco and discharge all of her cargo here before you were able [38] to get your bunkers? A. I signed one on leaving.

Q. You signed one on leaving?

A. When the ship sails I sign an agreement, whatever the agreement is.

Mr. FRANK.—What has that to do with this case? The date of that is away in January.

Mr. GRIFFITHS.—That does not make any difference. I will connect it up when I get the testimony of the War Trade Board here.

Q. Did you on November 3d have a bunker permit outstanding from the War Trade Board?

(Testimony of E. Bryn.)

A. On November 3d I was not ready to sail.

Q. I am asking you whether you did have a permit?

A. I don't know what the ship might have had; I could not tell you that.

Q. So far as you know you did not?

A. So far as I know I had no occasion to find out, because the time I find out is the same day the ship leaves; then I sign for the permit, when I have got the stores on board.

Q. Do you remember the date that you signed the agreement that I refer to?

A. That was on the day we sailed from San Francisco, here.

Q. Was it January 12th.

A. I will tell you in a minute. I should think it would have been on January 17th, about.

Q. You can get the accurate date this afternoon. At any rate, the first agreement that you signed after November 3d was in January? No doubt about that? You did not sign any agreement prior to that time, prior to January, did you?

A. No, I didn't propose to sign any paper before that.

Q. When did you get authority from the owners of the "Bayard" to sign that agreement?

A. I didn't get any authority like that; when I came down to the custom house to clear the vessel, all those papers are brought before me and I sign them.

(Testimony of E. Bryn.)

Q. Do you mean to say that you would sign an agreement with the understanding that the "Bayard" would, if granted bunkers, return to the port of San Francisco and here discharge all her cargo, without having authority from the Norwegian owners of the "Bayard" [39] to sign the agreement?

A. No, I don't mean to say any such thing, but I have got nothing to do with those matters.

Q. You say that you signed that agreement?

A. Yes; when the ship sails I go to the custom house and all these papers are placed before me and I sign them, but it is not up to me to find out whether they are or not. That is for others to do that work.

Q. Let me understand: You did not have any authority from your owners, express authority, to sign that agreement, then, did you?

A. Such a thing never occurred; I never got such authority; I had nothing to do with it.

Mr. FRANK.—The owners would not authorize the ship to go out unless she complied with the Government requirements.

The COURT.—I understand the charter required that, to go and return.

Mr. GRIFFITHS.—But, if your Honor please, the War Trade Board would not on November 3d grant bunkers—and by "bunkers" I mean oil and supplies—without an absolute guarantee, and furthermore without a showing that the party who signed the agreement had authority to sign it, because what they wanted to be sure of was that the

(Testimony of E. Bryn.)

ship would return, and they were not satisfied to take the word of anybody who was not authorized to sign.

Mr. FRANK.—How does that affect the issue here?

The COURT.—What I am trying to suggest is that where a charter requires that the vessel go from San Francisco to Australia and return, that seems to be sufficient authority from the owners to warrant the captain saying that he would fulfill the charter, that he would go there and come back.

Mr. GRIFFITHS.—As a matter of fact, the War Trade Board, your Honor, insisted with respect to this very vessel, on a cable direct from Norway, as to her present voyage, before she could get bunkers.

Mr. FRANK.—How would that affect this question here? This is bringing into the case immaterial matters. [40]

Mr. GRIFFITHS.—I don't think it is immaterial at all. The War Trade Board has to be satisfied when you submit your charter—

Mr. FRANK.—Very well, go on and submit your case in your own way. I am simply giving my own view instead of objecting directly to the introduction of the testimony.

Mr. GRIFFITHS.—But you started the discussion. Let me present my view of it.

Q. Now, Captain, the agreement to which I have referred was signed by yourself and by somebody else. That was Mr. F. W. Keith? Who is agent for your vessel here?

(Testimony of E. Bryn.)

A. Captain Olson, at the present time.

Q. Who was the agent of your vessel here on January 7th? A. The Norway-Pacific Line.

Q. Do you know who the secretary of that line was? A. Mr. Kutter.

Q. On January 7th? A. Yes.

Q. Do you remember who signed that agreement with you?

A. Nobody signed it with me. This thing is a formality that we do down at the custom house when the ship leaves; we go down there and put our name on the papers.

Q. You are talking about the manifest?

A. No, I am talking about those papers.

Q. I am talking about the agreement with the War Trade Board.

A. I am talking about that—all those papers down here.

Q. You don't remember who signed it with you?

A. I don't remember who signed it with me.

Q. As a matter of fact, it was signed by Mr. F. W. Keith, secretary of the Norway-Pacific Line, was it not?

Mr. FRANK.—Let him look at it. It might have been the custom house man.

A. Are you sure those papers concern me at all?

Mr. GRIFFITHS.—It bears your signature.

A. Yes. [41]

Q. It is an agreement to return to port. Did you sign that agreement? A. Yes.

(A recess was here taken until two thirty P. M.)

AFTERNOON SESSION.

Mr. GRIFFITHS.—Q. If your Honor please, Mr. Frank's witness has not come, and I can put a witness on out of order.

The COURT.—Very well.

Testimony of Isaac H. Cory, for Respondent.

ISAAC H. CORY, called for the respondent, sworn.

Mr. GRIFFITHS.—Q. What is your address, Mr. Cory? A. Residence?

Q. No, your business address?

A. Custom house.

Q. You are connected with the local office of the War Trade Board, are you not? A. Yes.

Q. In what capacity? A. Assistant agent.

Q. The activities of the War Trade Board include, do they not, what is called the Bureau of Transportation?

A. That is a branch of the War Trade Board.

Q. Have you any special connection with the Bureau of Transportation, and if so what?

A. I handle all matters pertaining to transportation.

Q. What, describing them briefly, are the functions of the Bureau of Transportation of the War Trade Board?

A. The functions are to license, to control operation of the vessels, of all vessels of any country going out of the port, of any port in the United States, going foreign, in such a way as to regulate

(Testimony of Isaac H. Cory.)

the use of them to the best advantage of the United States during the war.

Q. Does that Bureau and this local office of the War Trade Board, have control of bunkers?

A. Yes.

Q. What do you mean by "bunkers" as used in that sense? [42]

A. Bunkers, as used in the sense of the Bureau of Transportation, are regarded in a different light than they are as regards the custom house. We consider bunkers not only the fuel oil, or the fuel coal which is the customs definition of bunkers, but we go further and consider also any stores such as food stuffs, engineering stores, or anything else in the line of supplies taken on board the steamer.

Q. What is necessary in order that neutral vessels may get bunkers? Just describe what the procedure is?

Mr. FRANK.—One moment. I want to offer in objection or suggestion, whatever you may consider it, that the question be made to apply to the time here in question.

Mr. GRIFFITHS.—I was coming to that. I wanted to lay out the general procedure and then have Mr. Cory confine it to November 3d, 1917; I will put it this way: Was it necessary on November 3, 1917, that a neutral vessel, a Norwegian neutral vessel, should have a permit from the War Trade Board in order to get bunkers?

A. Yes.

(Testimony of Isaac H. Cory.)

Q. How would that permit be secured?

A. Usually the broker that handles the vessel files a formal application with the War Trade Board or the branch—that is usually filed at the branch office, but in some cases it is filed by the owners in Washington and New York, and the branch office is advised accordingly to issue the license, or withhold the license, depending upon whether or not the application is approved or disapproved.

Q. Would an agreement be exacted from the owners, or their representatives, in order to secure bunkers after the application?

A. Several agreements would be exacted.

Q. Several agreements would be exacted?

A. Yes.

Q. Then would a permit issue if the application were approved?

A. The permit would be issued on authority from Washington; if the War Trade Board or Bureau of Transportation in Washington approved the application and they were furnished with the fact, and when they knew that the agreements had been executed, they would grant the license. [43]

Q. When that agreement was presented to you, would you require being satisfied that the parties signing the agreement had authority from the owners of the vessel to sign?

A. At that time we did not require them to present proof that they were authorized to sign. At

(Testimony of Isaac H. Cory.)

that time, if I was satisfied myself that the agent or the captain had sufficient authority to represent his owner along these lines—it was a very drastic agreement—I would grant him the license on the strength of him signing the affidavit.

Q. You would require to be satisfied that he did have authority to sign the affidavit, though?

A. Yes; in all cases, so far as I have found, they had sufficient authority.

Q. Have you made search of the records of the local office of the War Trade Board with reference to the Norwegian motorship “Bayard”?

A. Yes.

Q. Did the “Bayard” have outstanding on November 3d, a permit for bunkers—November 3, 1917? A. No.

Q. When, for the first time, after November 3d, 1917, do your records disclose an application for bunkers on behalf of the “Bayard”?

A. I have a copy of the license of the “Bayard” here. This will give the date of the license.

Q. Have you got, first, the date of the application? Have you got the application?

A. Here is the application with a copy of the license appended. It is dated January 14.

Q. Which is January 14—the permit or the application?

A. Of the application, the original application, we have no record other than this one here, which is signed dated January 7—the application; in

(Testimony of Isaac H. Cory.)

other words, the Norway-Pacific Line signed an application for bunkers, fuel on January 7, 1918. They were requested to furnish certain affidavits, certain agreements, rather, which they furnished here on January 12, five days later, and a license was issued on January 14.

Q. Now, by whom is the agreement signed?
[44] A. It is signed by the master, E. Bryn, and it is also further signed by the Norway-Pacific Line Agency, by F. W. Kutter, I think it is, Secretary; signed as agent and sworn to before a Notary Public.

Q. And then you have a permit following?

A. There is a copy of the license.

Q. Of the license?

A. The original license is in Washington. This is our office copy.

Q. That is what date?

A. January 14th, the date of the license. This is the license for the stores. At that time we issued two licenses, one for the fuel and one for the food stuff.

The COURT.—May I inquire, do you have to await the arrival of these papers by mail, or do you get telegraphic advices that they will be along later?

A. These are our office copies; we make a triplicate set; one copy of the license is given to the master of the vessel, one sent to Washington, and one sent to our files.

(Testimony of Isaac H. Cory.)

Q. They are issued here?

A. Yes, on telegraphic directions.

Q. On telegraphic directions?

A. In that particular case. There are some cases that we issued without that.

Mr. GRIFFITHS.—This agreement, if your Honor please, refers to a telegram. It says, “Complying with telegraphic directions,” something to that effect—which would come from the War Trade Board, Mr. Cory? A. Yes.

Q. Have you also searched your records with reference to the Norwegian motor ship “Brazil”?

A. Yes. I have the records here in the same way that I have of the other.

Mr. FRANK.—What has that got to do with this case?

Mr. GRIFFITHS.—I have to put my case in out of order. The “Brazil” is owned by the same company as the “Bayard,” and the dates of the applications are identical.

Mr. FRANK.—I do not see how that cuts any figure here.

Mr. GRIFFITHS.—I think it will develop that the owners of this vessel did not give authority for the signing of these agreements before January 7th. I want this date to go in [45] evidence.

Mr. FRANK.—You mean that if there had been an application made early in November, that they would not have given authority for that at that time? There is no evidence that they could not

(Testimony of Isaac H. Cory.)

have had the authority at any time that they wanted it.

Mr. GRIFFITHS.—I will connect it up by showing that they did not have authority until January 7th. I would like to put this in.

Mr. FRANK.—Subject to my objection, it is immaterial.

Mr. GRIFFITHS.—If it is immaterial, the Court won't consider it, but the identity of dates here is a significant fact.

Q. Mr. Cory, have you examined the custom-house records to see on what dates the "Brazil"—

Mr. FRANK.—Mr. Kutter tells me the "Brazil" is owned by a different company, not by the same owner.

Mr. GRIFFITHS.—I have admitted the "Bayard" was owned by a Aktieselskapet Bonheur on your statement that that is the representation in Lloyds. Lloyds shows the "Brazil" is owned by the same owners, and it is represented by Fred Olson & Company, the same managing owners: Aren't you also agent for the "Brazil," Mr. Kutter?

Mr. KUTTER.—We are the agents.

Mr. GRIFFITHS.—Isn't she owned also by the Aktieselskapet Bonheur?

Mr. KUTTER.—No.

Mr. GRIFFITHS:—You will have to clear up the ownership, Mr. Frank. I have admitted on your representation that Lloyds should govern as

(Testimony of Isaac H. Cory.)

to what the ownership is. I have it that both of these vessels are listed under Aktieselskapet Bonheur.

Mr. FRANK.—The only purpose of the admission, so far as that is concerned, was to get rid of proof of the incorporation of the plaintiff. Now, the fact that you have looked in Lloyds as to the ownership of the “Brazil” does not have anything to do with this [46] proposition. If it is owned by the same parties, I am perfectly willing to admit it, but I have nothing to verify that now.

Mr. GRIFFITHS.—Let us take it subject to that proof, that it is owned by the same parties, because I hoped to examine Mr. Kutter about it first.

Mr. FRANK.—That is all right. I simply want to make the suggestion that if it is owned by the same corporation, I am perfectly willing to admit it, but our information is now it is not.

Mr. GRIFFITHS.—May I proceed with that understanding?

Mr. FRANK.—Go on.

Mr. GRIFFITHS.—What date did the “Brazil” enter here?

A. I am not sure, but I believe it was November 13th; it is a matter of customs records, however, it can be very easily ascertained.

Mr. GRIFFITHS.—I will examine the custom-house records and ascertain if they show that.

Mr. FRANK.—All right.

(Testimony of Isaac H. Cory.)

Mr. GRIFFITHS.—Q. Did the “Brazil” have an outstanding permit for bunkers as of date November 13th? A. No, I do not think she did.

Q. When was her application for bunkers made?

A. The “Brazil’s” application was made at the same time that the “Bayard’s” was, the same day.

Q. That was January 7th?

A. I think the agreement was signed two days later.

Q. Have you got the actual application and the agreement there? A. Yes, I have it here.

Q. Will you give me the date of the application and the date of the agreement?

A. The application date is January 7th and the agreement was signed on the 14th of January, and the license issued the same day.

Q. By whom was the agreement signed there?

A. It was signed by August Larsen, Master, and also Mr. Kutter as agent, secretary [47] for the Norway-Pacific Line.

Q. That is in each case, then, as I understand it, there is the signature by the master, and then by Mr. Kutter, the secretary of the Norway-Pacific Line?

A. That is for the “Brazil” you are asking?

Q. Yes. A. Yes.

Q. Then, Mr. Corey, it is true, is it not, that at no time between November 3d, 1917 and January 14, 1918, was the “Bayard,” so far as your records, free to sail from this port?

(Testimony of Isaac H. Cory.)

A. My records do not disclose anything prior to this application, January 7th.

Q. There is no outstanding permit to leave during that time? A. No.

Q. She could not have got away?

A. Not to my knowledge, and not as far as my records show.

Q. Is it your understanding that the Norwegian vessels, generally, were held up in this port during November?

Mr. FRANK.—I object to what his understanding was. I don't see how that can be competent.

The COURT.—If he could show that all Norwegian vessels were held up it would amount to the same thing.

Mr. FRANK.—I know that there was one held up for a particular and peculiar reason; I know all about it.

Mr. FRANK.—There were a great many on Puget Sound.

Mr. GRIFFITHS.—What I am getting at is that this gentleman has testified that there were negotiations going on in Washington, and I am going to cite the deposition of the War Trade Board as to the details of that.

Mr. FRANK.—We will come to that later.

The COURT.—He can testify, if he knows it to be a fact, that all Norwegian vessels were held up during that period. Of course, if that were true it would include this particular vessel.

(Testimony of Isaac H. Cory.)

Mr. GRIFFITHS.—Isn't it your understanding that all of the Norwegian vessels were held up during that time? [48]

Mr. FRANK.—I object to that mode of putting the question; his understanding is one thing, and the fact is another thing.

The COURT.—Yes, does he know the fact.

Mr. GRIFFITHS.—Q. Were they held up?

A. Well, I would not specify all Norwegian vessels; I will say all neutral vessels were held up pending an understanding that the vessels would return to the United States for discharge of their return cargo in consideration of the United States granting them the necessary fuel and stores to proceed on their business.

The COURT.—If they made that agreement?

A. If they made that agreement, they were permitted to go.

Mr. GRIFFITHS.—Q. You had to be satisfied at the time that the parties purporting to sign the agreement had authority to sign it?

A. Yes; of course, I used my discretion at that time. At the present time I do not. I require a direct cable from the owners in Norway.

Q. As a matter of fact, you had a direct cable from the owners of the "Bayard" in Norway for the present voyage? A. Yes.

Mr. GRIFFITHS.—That is all.

Cross-examination.

Mr. FRANK.—Q. Then as I understand it, Mr.

(Testimony of Isaac H. Cory.)

Corey, all that was required at that time was that the voyage should be a voyage from San Francisco, Pacific Coast Ports, as it is here, foreign and return, and if that was agreed upon that was the end of the prohibition. There was no more holding up under any circumstances?

A. There was no holding up except pending an agreement between the vessel and the United States Government.

Q. And that agreement was signed as these agreements are signed: Is that it? A. Yes.

Q. That is, a man came and made an application for bunkers; when he made application for the bunkers, you said "Well, sign this agreement, that this return voyage will be to an American port," [49] and he says, "Very well, I will," and he was then granted a license as a matter of course?

A. No, the fact that that agreement was signed was not necessarily an agreement that he would get a license. If the shipping board or chartering committee did not approve that voyage, or if the War Trade Board did not approve the voyage, did not approve the character of the return cargo, he did not get it.

Q. I understand; those are matters outside of your official duties. This was what you were attending to, was it not?

A. I always had these signed on instructions from Washington before we let the boat go.

Q. The considerations which were moving the War Trade Board in Washington or the Chartering

(Testimony of Isaac H. Cory.)

Committee in New York to refuse to let a vessel go out were matters within their discretion and varying in each instance, according to the circumstances: Is that right? A. Usually.

Q. Because one vessel was held up, you could not say whether another one would be; it would depend entirely upon circumstances attaching to that particular vessel and voyage: Is that right? A. Yes.

Q. Whether that was so on November 3d, do you know?

A. That has always been so since October 1st, at any rate; possibly earlier.

Q. What is that?

A. Within my knowledge, I would say up to October 1st.

Q. When was the charter board organized, do you know? A. The War Trade Board?

Q. No, the charter boards.

A. The charter committee has nothing to do with the War Trade Board.

Q. You spoke of them.

A. They are advisory.

Q. When were they organized?

A. I don't know.

Q. Then it is your opinion that the charter committee is advisory to the War Trade Board?

A. Only as regards the destination, the routing of the vessel. [50]

The COURT.—Q. The scheme that you speak of was in effect as early as October 1?

A. Yes; it was more or less disorganized up until

(Testimony of Isaac H. Cory.)

the 15th of January, when we had regular printed forms, and we began to use our judgment as well as possible before that.

Mr. FRANK.—Q. There were no considerable vessels held up before you had got into good shape in January?

A. Only the neutral vessels, practically.

Q. So far as the neutral vessels were concerned, as far as your experience was, there were none of them held up when they made agreements to go out and come back to the United States. That was the condition? A. Yes.

Q. Now, the "Bayard" made two previous voyages. She just returned from a voyage. Do you remember that? A. Yes.

Q. Did she get her bunkers and permit?

A. Not as far as my records show. It may be that she sail—did she sail from this port?

Q. She sailed from this port.

A. She may have got a permit through the collector of customs at that time; he was handling that matter before the War Trade Board was fully organized, as the only records that would show that would be at Washington.

Q. Now, as a rule, these applications are not made a long time ahead—when they are loading or getting ready to sail, they come in and make application? It is a matter of a very short piece of business to do it, isn't it?

A. It depends on what you call a short piece. Would you consider a week short?

(Testimony of Isaac H. Cory.)

Q. Say a week.

A. I would say that the matter could easily be disposed of in a week.

Q. So there was no occasion in November for these people to make application for bunker coal for a voyage to be begun on January 14?

A. No, not necessarily.

Mr. FRANK.—Where is the application in this case that was signed?

Mr. GRIFFITHS.—You mean the agreement?
[51]

Mr. FRANK.—The agreement.

Mr. GRIFFITHS.—It is attached to the blue slip.

A. The agreement is attached to the other one.

Mr. FRANK.—I think he will read this into the record. I do not presume that he can leave these here. The application is "San Francisco, California, January 12, 1918. Hon. Collector of Customs, District and Port of San Francisco. Sir: Complying with requirement in telegram from the Bureau of Transportation, War Trade Board, allowing the Nor. M-S. "Bayard" 650 Tons=4550 barrels=191,100 Gallons of bunker oil, for voyage from San Francisco to Sydney & Melbourne and return, we hereby guarantee that this vessel, the Nor. M/S Bayard will proceed from San Francisco to Sydney & Melbourne and after taking on cargo will return directly to the United States, and that

its entire cargo shall be discharged at a port or ports of the United States.

E. BRYN, Master Nor M/S "Bayard,"
NORWAY PACIFIC LINE AGENCY,
F. WM. KUTTER, Secty.,
Agents Nor. M/S Bayard.

Sworn to before me this 12th day of January, 1918.

[Seal]

M. J. LAWRENCE,
Notary Public."

Mr. GRIFFITHS.—Mr. Frank, will you let me interrupt you? Perhaps it will be in the interest of saving time, while Mr. Cory wants these records back, he will leave them here long enough to be copied.

Mr. FRANK.—I just want to read what I deem material. This has one specification in print, "Goods will be ready for shipment." This "will be" is stricken out.

The WITNESS.—That was an old application form that we used at the time for regular export licenses. [52]

Mr. FRANK.—That is stricken out and it says "Goods ready for shipment." I want to indicate that the application was made after the goods were ready for shipment. If they are going to be copies in, we will offer them in evidence in that shape.

Mr. GRIFFITHS.—There are four groups here. There is a group of documents that has reference to the "Bayard's" bunkers, strictly speaking, fuel, and then there is a group of documents relative to

stores on the "Bayard," and then there is bunkers on the "Brazil" and stores on the "Brazil." The copies may be marked Exhibits "A," "B," "C" and "D," and then we will return the original.

(The documents are as follows:)

Exhibit "A."

San Francisco, California, Jan. 12, 1918.

Hon. Collector of Customs,

District and Port of San Francisco,

Sir:

Complying with requirements in telegram from the Bureau of Transportation, War Trade Board, allowing the Nor. M/S Bayard 650 Tons=4550 barrels=191,100 Gallons of bunker oil, for voyage, from San Francisco to Sydney & Melbourne, and return, and hereby guarantee that this vessel, the Nor M/S "Bayard" will proceed from San Francisco to Sydney & Melbourne and after taking on cargo will return directly to the United States, and that its entire cargo shall be discharged at a port or ports of the United States.

E. BRYN, Master Nor. M/S "Bayard."

NORWAY PACIFIC LINE AGENCY,

F. W. M. KUTTER, Secty.,

Agents Nor. M/S Bayard.

Sworn to before me, this 12th day of January, 1918.

[Seal]

M. J. LAWRENCE,

Notary Public. [53]

Application Form A-2.

Form E. A. B. 49.

Exports Administrative Board

Bureau of Export Licenses.

1435 K Street NW.

Washington.

App. No. _____

Disposition _____

Date _____

Drawn by _____

Checked by _____

License No. _____

Expiration date _____

(Space above this line for official use only.)

Instructions on the back of this sheet should be carefully read before this application is filled in. Answers must be written legibly or typewritten, if possible.

APPLICATION FOR ORDINARY BUNKER
LICENSE.

Applicant's Reference No.—.

Date Jan. 7, 1918, 191—

Bureau of Export Licenses,

1435 K Street NW., Washington, D. C.

I hereby apply for license to export (1) 650 Tons
We _____ (Quantity)
of (2) Fuel Oil Valued at (3) \$—— to (4) Nor.
(Goods)

M/S. "Bayard" at (5) San Francisco (6) Goods
(Address)

will be ready for shipment _____ (7) If the goods

are to be re-exported, state to what country ————
 Voyage—San Francisco to Sydney & Melbourne,
 Aus. and return to San Francisco.

(Signed) NORWAY PACIFIC LINE,

By

Davison,

(8) Applicant's address 433 California St.,
 San Francisco.

(9) License to be sent to P. W. Bellingall, Custom House Broker. 409 Washington St. (10)
 San Francisco.

(Over.)

Please read carefully before filling in application.
 This will avoid delay.

(a) A separate application must be made for each country of destination.

(b) A separate application must be made for each commodity. [54]

If goods covered by a license are to be shipped in more than one consignment the shipper may use form entitled "Certificate for Partial Shipment against Export License."

(c) To avoid delays, applicants are requested, in case of further communication, to refer to their own reference number and date as well as to the reference number of the Bureau of Export Licenses, if known, and to refer to each application in a separate letter.

(d) The statement in regard to the quantity should be made in definite units of net weight or measure, such as tons (of 2240 pounds each),

pounds, bushels, gallons, etc., and not in such terms as boxes, cases, sacks, etc. Measurement must be in tons of 40 cubic feet or fraction thereof. Measurement must not be given in the case of goods which are by custom shipped on a weight basis. Description of goods must include number of packages and contents of each. Values must be in dollars.

(e) Responsibility of exporter. Failure on the part of the applicant to take reasonable precaution as to the distribution of goods or the granting of an export license based upon the statements contained in this application, will not relieve the consignor from any responsibility to which he may be liable for affording aid or comfort to the enemy.

(f) Applicants are advised, if possible, to send in their applications at least two weeks in advance of the proposed date of ocean shipment, or as much earlier as possible. Export licenses, however, will not be issued more than 60 days before the proposed date of ocean shipment. Ocean bills of lading must bear date earlier than the expiration date shown on the license. If a license expires before a shipment is made and a renewal is desired, the original and duplicate copy of the original license must be returned with an Application Form E, entitled "Application for Renewal of Export License." Original and/or renewal applications will be considered in the order received. [55]

(g) When filled in and signed send this application to the Bureau of Export Licenses, 1435 K

Street NW., Washington, D. C., or to any branch of that bureau.

(h) Copies of all forms may be secured from the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or from branch office of that bureau at No. 11 Broadway, New York, or from any branch of that bureau.

War Trade Board.

Exports Administration Board,
1435 K Street, Washington, D. C.

License No.	Jan. 14	8
Date	Mar. 13	8
Expires	191—	
Applicant's No.	EMD	

UNITED STATES OF AMERICA
BUNKER LICENSE.

Permission is hereby granted Norway Pacific Line, 433 California St., San Francisco, Cal., to export 650 tons, of Fuel Oil, of Nor. Motor Ship "Bayard." Total value \$—— from the United States to Sydney & Melbourne, Aust. at —— by any vessel flying —— flag.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter, issued by the Exports Administrative Board.

The above license number must appear on the export bill of lading and export declaration.

EXPORTS ADMINISTRATIVE BOARD.

VANCE C. McCORMICK,

Chairman.

Countersigned:

C. A. RICHARDS,

Director of Bureau of Export Trans.

By _____.

Original and Duplicant sent to (Applicant
Forwarding
Agent

This license Not Valid Unless Countersigned And
Impressed With The Seal Of The Exports Admin-
istrative Board.

This License is Revocable.

Shipped Complete —, 191—.

War Trade Board. Form E A B 14 [56]

Exhibit "B."

(Letter-head Norway-Pacific Line.)

San Francisco, November 28, 1917.

Collector of Customs,
San Francisco, Cal.

Sir:

Application is respectfully made for license for
ships stores as per attached list "for use while in
port" on the following steamers:

Name of Vessel—Norwegian Motor Ship "Bayard"

Name of Destination—Laid up San Francisco Bay

Probable duration of voyage—Laid up San Fran-
cisco Bay.

Number of Crew About 26

Place where stores are to be delivered—Union Iron
Works.

Respectfully,

NORWAY PACIFIC LINE AGENCY,

By F. Wm. Kutter,
Secretary.

(Bill-head Foard-Barstow Ship Chandlery Co.)

San Francisco, Cal., November 28, 1917.

List of Stores for Norwegian M/S "Bayard."

60 lbs. Wire Nails.

(Rubber Stamp:) Export license is hereby granted for all articles contained in shipment requiring a license, provided the same are exported on or before —, 19—.

EXPORTS ADMINISTRATIVE BOARD.

C. A. RICHARDS,

Director of Bureau of Export Licenses.

By C. O. G. Miller. [57]

(Letter-head Norway-Pacific Line)

San Francisco, December 10, 1917.

Collector of Customs,

San Francisco, Cal.

Sir:

Application is respectfully made for license for Ship Stores as per attached list for the following Steamer:

Name of Vessel Norwegian M/S "Bayard"

Port of Destination (Laid up in Port
(for Repairs

Number of Crew About 29 Men
(Place where stores are to be

(delivered Union Iron Works

Respectfully,

NORWAY PACIFIC LINE AGENCY.

By F. Wm. Kutter,

Secretary.

(Bill-head Foard-Barstow Ship Chandlery Co.)

San Francisco, Cal., December 10, 1917.

List of Stores for Norw. Str. "Bayard."

20 gals. Kerosine Oil.

1 Walkers Log, complete.

(Rubber Stamp:) Export License is hereby granted for all articles contained in shipment requiring a license, provided the same are exported on or before —, 19—.

EXPORTS ADMINISTRATIVE BOARD.

C. A. RICHARDS.

I. H. Cory. [58]

War Trade Board.

License No. 612600.

Exports Administrative Board.

Date Jan. 14, 1918.

Expires Mar. 15, 1918.

1435 K Street Washington, D. C.

Applicant's No. EMD. 191—.

UNITED STATES OF AMERICA.

SHIP'S STORES LICENSE.

Permission is hereby granted P. W. Bellingall, of 409 Washington St., San Francisco, Cal. to export As per attached list of Ship's Stores Nor. M. S. "Bayard" total value, \$— from the United States to Australia and back to San Francisco, at — by any vessel flying — flag.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter, issued by the Exports Administrative Board.

The above license number must appear on the export bill of lading and export declaration.

EXPORTS ADMINISTRATIVE BOARD.

VANCE C. McCORMICK,

Chairman.

Countersigned: C. A. RICHARDS,

Director of Bureau of Export Licenses,

Original and Duplicate sent to (Applicant
(Forwarding
Agent.

This License Not Valid Unless Countersigned and Impressed With The Seal of The Exports Administrative Board.

This License is Revocable.

Shipped Complete — 191—.

War Trade Board.

612600.

Form E. A. B. 14. [59]

Port of San Francisco, January 12th, 1918.

I, Erling Bryn, Master of the Norwegian Motor-Ship "Bayard," do solemnly swear that the ship's stores permitted to be laden on board said vessel, shall not be transferred at sea to any vessel nor landed at any foreign port.

E. BRYN,
Master.

Subscribed and sworn to before me, this 12th day of January, 1918.

[Seal]

M. J. LAWRENCE,
Notary Public.

Form E. A. B. 49. Application Form A-2.

Exports Administrative
Board.

App. No.....

Bureau of Export Li-
censes

Disposition

Date.

1435 K Street NW.

Drawn by.....

Washington.

Checked by.....

License No. 612,600...

Expiration date.....

(Space above this Line for Official use only.)

.....
Instructions on the back of this sheet should be carefully read before this application is filled in. Answers must be written legibly or typewritten if possible.

APPLICATION FOR SHIP'S STORES LI-
CENSE.

Applicant's Reference No. —.

Date Jan. 14, 1918.

Bureau of Export Licenses,
1435 K. Street, NW.,
Washington, D. C.

I

We hereby apply for license (1) ships stores as
(Quantity)
per attached list of (2) Norwegian M. S. "Bayard."
(Goods)

Australia and back to San Francisco. Valued at
 (3) \$—— to (4) ————— at (5)

(Consignee.)

_____,
 (Address.)

(6) Goods will be ready for shipment Immediately,
 191—.

(7) If the goods are to be re-exported, state to
 what country ——. [60]

(Signed) P. W. BELLINGALL,

By R. R. BELLINGALL,

(8) Applicant's Address 409 Washington St. San
 Francisco.

(9) License to be sent to P. W. Bellingall,

(10) Address 409 Washington St., San Francisco.

(Over.)

Please read carefully before filling in application.
 This will avoid delay.

(a) A separate application must be made for
 each country of destination.

(b) A separate application must be made for
 each commodity. If goods covered by a license are
 to be shipped in more than one consignment the
 shipper may use form entitled "Certificate for Par-
 tial Shipment against Export License."

(c) To avoid delays, applicants are requested, *in*
 case of further communication, to refer to their
 own reference number and date as well as to the
 reference number of the Bureau of Export Licenses,
 if known, and to refer to each application in a
 separate letter.

(d) The statement in regard to the quantity should be made in definite units of net weight or measure, such as tons (of 2240 pounds each) pounds, bushels, gallons, etc., and not in such terms as boxes, cases, sacks, etc. Measurement must be in tons of 40 cubic feet or fraction thereof. Measurement need not be given in the case of goods which are by custom shipped on a weight basis. Description of goods must include number of packages and contents of each. Values must be in dollars.

(e) Responsibility of exporter. Failure on the part of the applicant to take reasonable precaution as to the distribution of goods or the granting of an export license based upon the statements contained in this application, will not relieve the consignor [61] from any responsibility to which he may be liable for affording aid or comfort to the enemy.

(f) Applicants are advised, if possible, to send in their applications at least two weeks in advance of the proposed date of ocean shipment, or as much earlier as possible. Export licenses, however, will not be issued more than 60 days before the proposed date of ocean shipment. Ocean bills of lading must bear date earlier than the expiration date shown on the license. If a license expires before a shipment is made and a renewal is desired, the original and duplicate copy of the original license must be returned with an Application Form E, entitled "Application for Renewal of Export License." Original and or renewal applications will be considered in the order received.

(g) When filled in and signed send this application to the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or to any branch of that bureau.

(h) Copies of all forms may be secured from the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or from branch office of that bureau at No. 11 Broadway, New York, or from any branch of that bureau.

(Bill-Head Foard-Barstow Ship Chandlery Co.)
 San Francisco, Cal., January 11, 1918.
 Norwegian M. S. "Bayard."

DECK.

- 1 bbl. Boiled Oil
- 20 gls. Raw Oil
- 65 gls. Coal Oil
- 2 gls. Varnish
- 2 gls. Turpentine
- 2 gls. Dryer
- 300 lbs. Sal. Soda
- 150 lbs. wh. Cotton Waste
- 12 pkgs. Gold Dust
- 1 doz. Paint Brushes
- ½ doz. Bath Bricks
- 1½ doz. Br. Shine
- ½ doz. glv. Buckets
- ½ doz. Deck Scrapers
- 2 lbs. Pumice Stone
- 2 lbs. Bees Wax
- 2 coils 15 thread Manilla

- 7 coils EB 3 thread Manilla
- 1 small coil Spun yarn
- 1 hank Cotton Twine
- 1 reel Wire
- 1 coil Wire Seizing [62]
- 2 lengths Hose
- 30 lbs. Wire Nails
- 2 lbs. Carpenter Glue
- 2 lbs. Carpenter Chalk
- 1 Grind Stone
- 10 feet Rubber Packing
- 2 Sailmaker Palm
- 1 doz. Sheet Sandpaper
- 3 wire Brushes
- 3 bbtls. Log oil
- 10 lbs. Copper Tacks
- 4 doz. Fairy Soap
- 1 Odorant
- 4 Coal Shovels
- 2 electric Hand Lamps
- 4 electric Batteries
- 1 pair Pliers
- 1 Combination Screw Driver
- 1 pc. Wire Netting
- 1 roll Coir Matting
- 5 doz. Lamp Glasses
- 1/2 doz. Rubbing Brushes
- 2 Marlin Spikes
- 2 Hand Lanterns
- 1 Bolt Cotton Duck

(Rubber Stamp:) Copy.

(Bill-Head Foard-Barstow Ship Chandlery Co.)

San Francisco, Cal., January 11, 1918.

Norwegian M. S. "Bayard."

ENGINE.

- 2 bbls. Coal Oil
- 2 bales Cotton Waste
- 1 bale San. Rags
- 75 lbs. Sal. Soda
- 100 lbs. Soft Green Soap
- 2 doz. Hack Saw Blades
- 30 lbs. Mogul Cup Grease
- 2 lbs. Italien Hemp
- 5 lbs. $\frac{3}{8}$ Hemp Packing
- 5 lbs. $\frac{1}{2}$ Hemp Packing
- 3 lengths round Iron
- 1 wood Rasp
- 1 pc. glv. Sash Cord
- 4 glv. Iron Buckets
- 1 roll Drawing Paper
- 2 doz. ass. Cotter Pine
- 4 bit Stock Drills
- 6 ass. Files
- 1 oil Gun
- 2 tins Smooth-on
- 1 Record Book
- 2 doz. Sweat Towels
- 1 gross Matches
- 1 doz Stub Pens
- $\frac{1}{2}$ doz Pencils
- 2 Note-Pads
- 75 lbs. White Lead

- 2 gals. White Damar
- 2 qts. Varnish for Linoleum
- 1/2 gl. Wh. Japan
- 2 lbs. Prussian Blue
- 12 gls. Gray Gas Engine Enamel
- 200 lbs. White Zinc
- 5 gls. Boiled Oil
- 1 Mirror
- 1 Wash Basin
- 1 Drawer Pull
- 2 Wall Sockets
- 4 Franco Batteries
- 2 doz. Sheets Emery Cloth

CABIN & GALLEY.

- 50 lbs. sal Soda
- 25 lbs. wh. cotton Waste
- 12 pkgs. Gold Dust
- 50 lbs. soft Soap
- 1 doz. Washing Rags
- 6 Lamp Shades
- 3 doz. Cakes Soap
- 50 lbs. Sal. Soda
- 30 lbs. Compound
- 1 bale san. Rags
- 25 Carbon Lamps
- 3 Electric Sockets
- 60 small Copper Rivets
- (Rubber Stamp:) Copy. [63]
- 150 lbs. Beets
- 75 lbs. Tomatoes
- 24 Bottles Chow Chow
- 24 bottles Pickles

- 6 Bottles French Mustard
- 30 Glasses Jam
- 2 Cases Apricots
- 1 Case Pineapples
- 1 Case Pears
- 1 Case Tomatoes
- 2 Doz. Tomatoe Soup
- 2 doz. Chicken Soup
- 2 doz. Clam Soup
- 2 doz. Vegetable Soup
- 100 Heads Cabbage
- 30 Heads Cauliflower
- 30 Bunches Celery
- 300 lbs. Bacon
- 2 Cases Royal Baking Powder
- 4 Cases Apples
- 2 Cases Oranges
- 2 Bunches Bananas
- 1 Case Norw. Sardines
- 2 Cases Booth's Sardines
- 2 Cases Corn Beef, 2 lbs. Tins
- 2 Cases Red Salmon
- 1 Case Boiled Beef, 6 lbs. Tins
- 6 Cases Lime Juice
- 2 Cases Sweet Peas
- 2 Cases String Beans
- 1 Case D. M. Asparagus
- 12 Bottles Chili Sauce
- 24 Bottles Worchester Sauce
- 12 Bottles Olive Oil
- 12 Bottles Essence of Vinegar
- 12 Bottles Red Color

- 3 Cases Fish Balls
- 2 Cases Hamburger Steak
- 2 Cases Soda Crackers
- 3 Cases Eggs
- 1 Case Jams in 10 lbs. Tins
- 300 lbs. Salt Pork
 - 2 Kegs Pigs Feet
 - 1/2 bbl. Salmon
 - 40 Sacks Potatoes
 - 2 Cases Corn
 - 5 gals. Pickles
 - 7 Cases Evap. Milk
 - 6 Cases Cond. Milk
 - 1/2 bbl. Codfish
 - 6 Bottles Essence
 - 5 gals. Claret
- 104 Sacks of Flour
 - 1 Case Lunch Tongues
 - 8 Sacks Rye Flour
 - 3 bbls. Beef
 - 1 bbls. Pork
 - 2 Cases Pilot Bread
 - 1/2 bbl. Herring
 - 75 lbs. Sago
 - 75 lbs. Pearl Barley
- 100 lbs. Quaker Oats
 - 75 lbs. Rasins
 - 50 lbs Prunes
 - 10 lbs. Currants
- 200 lbs. Cabin Butter
- 450 lbs. Crew Butter
- 120 lbs. Lard

- 800 lbs. Sugar
- 100 lbs. Cube Sugar
- 50 lbs. Dried Apricots
- 150 lbs. Rice
- 10 lbs. Pepper
- 4 lbs. Pepper Whole
- 4 lbs. Cinnamon Whole
- 6 lbs. Cinnamon Ground
- 6 lbs. Ginger
- 4 lbs. Nutmeg
- 2 lbs. Cloves.
- 6 lbs. Compressed Yeast
- 300 lbs. Coffee
- 25 lbs. Coffee Cabin
- 15 lbs. Tea, Crew
- 200 lbs. Dairy Salt
- 300 lbs. Hf. Grd. Salt
- 4 lbs. Hops
- 150 lbs. Pink Beans
- 2 lbs. Carroway Seed
- 2 lbs. Paprika
- 12 lbs. Jello
- 550 lbs. Codfish
- 80 lbs. Corn Starch
- 150 lbs. Cheese
- 75 lbs. Swedish Sausage
- 1 lb. Curry Powder
- 24 lbs. Pudding Powder
- 200 lbs. Onions
- 400 lbs. Carrots
- 400 lbs. Yellow Turnips
- 100 lbs. White Turnips

- 1 Case Cocoa
- 4 Boxes Magic Yeast
- 25 lbs. Corn Meal
- 1 Case D. M. Catsup
- 1 Case Puree Tomatoes
- 1 Case Lemons

(Rubber Stamp:) Export License is hereby granted for all articles contained in shipment requiring a license, provided the same are exported on or before — 19 —.

EXPORTS ADMINISTRATIVE BOARD.

C. A. RICHARDS.

I. H. Cory.

[64]

STORES M/S "BAYARD"

- 1500 lbs. Beef
- 300 lbs. Mutton
- 300 lbs. Pork
- 300 lbs. Veal
- 200 lbs. Frankfurters
- 25 lbs. Lunch Sausages
- 50 lbs. Calf Liver
- 100 lbs. Smoked Fish Salmon
- 250 lbs. Asst Fresh Fish

3025 lbs.

LIST OF STORES FOR NORW. MOTOR
STEAMER "BAYARD."

- 1 Bale Sanitary Rags
- 1 doz. Hack Saw Blades
- 2 Tins Mogul Compound
- 12 Excelsior Mattresses

- 1 Wire Spring Mattress
- 1 bbl. Tar
- 60 lbs. Wire Nails
- 20 gals. Kerosine Oil
- 1 Walkers Log Complete
- 1 bbl. Coal Oil
- 25 lbs. Soft Soap
- 100 lbs. Sal. Soda
- 2 Tins Mogul Compound
- 1 Pce. Sheet Brass
- 12 Cosmos Glasses
- 2 doz. Brass Screws
- 6 only Table Cloths
- 1 bbl. Boiled Oil
- 20 gals. Raw Linseed Oil
- 65 gals. Coal Oil
- 2 gals. Copal Barnish
- 2 gals. Turpentine
- 2 gals. Dryer
- 300 lbs. Sal. Soda
- 150 lbs. Cotton Waste
- 12 Pkgs. Gold Dust
- 1/2 doz. Paint Brushes
- 1/2 doz. Bath Bricks
- 1 1/2 doz. Qts. Brilliantshine
- 1/2 doz. Hvy. Galv. Buckets
- 1/2 doz. Scrapers
- 2 lbs. Pumice Stone
- 2 lbs. Beeswax
- 2 coils 15 thrd. Manila
- 7 Coils 3" Plym. Manila
- 5 lbs. Spunyard

- 100 ftms. Cotton Seine Twine
 - 1 Coil 2¾ Flex. St. Wire
 - 1 Coil Wire Seizing
 - 2 Lengths Fire Hose
- 30 lbs. Wire Nails
 - 2 lbs. Glue Carp
 - 2 lbs. Chalk
 - 1 Grindstone
- 10 ft. Porthole Rubber [65]
 - 2 Palms
 - 1 doz. Sheets Sandpaper
 - 3 Steel Brushes
 - 3 Bottles 3 in 1 Oil
- 10 lbs. Copper Tracks
 - 4 doz. Cakes Fairy Soap
 - 1 Adorant
- 50 lbs. Sal. Soda
- 25 lbs. White Cotton Waste
- 12 pkgs. Gold Dust
- 50 lbs. Soft Soap
 - 1 doz. Washing Rags
 - 4 Coal Shovels
- ½ doz. Paint Brushes
 - 2 Electric Hand Lamps Complete
 - 4 Extra Batteries
 - 2 bbls. Coal Oil
 - 2 Bales Cotton Waste
 - 1 Bale Rags
- 75 lbs. Sal Soda
- 100 lbs. Soft Gr. Soap
 - 2 doz. Hack Saw Blades
 - 30 lbs. Mogul Cup Grease

- 2 lbs. Italian Hemp
- 10 lbs. Hemp Packing
- 3 Lengths Rd. Iron
- 1 Hf. Rd. Hasp
- 50 ft. 1/16" Galv. Sash Cord
- 4 Galv. Iron Buckets
- 1 Roll Drawing Paper
- 2 doz. St. Cotter Pins
- 4 Bit St. Drills
- 6 Files
- 1 Oil Gun
- 2 Tins Smooth On
- 1 Record Book
- 2 doz. Sweat Towels
- 1 Gross Matches
- 1 doz. Stub Pens
- 1/2 doz. Pencils
- 2 Note Pads
- 75 lbs. White Lead
- 2 gals. White Damar
- 2 qts. Varnish
- 1/2 gal. White Japan
- 2 lbs. Pruss. Blue
- 12 gals. Gas. Eng. Enamel
- 200 lbs. White Zinc
- 5 gals. Boiled Oil [66]

LIST OF STORES FOR NORWEG. MOTOR
STEAMER "BAYARD."

- 1 S. C. Pliers
- 1 Screw Driver
- 1 Pce. Wire Netting
- 1 Mirror

- 1 Drawer Pull
 - 1 Wash Basin
 - 2 220 Volts Wall Sockets
 - 4 Batteries
 - 1 Bolt Cotton Duck
 - 100 ft. Coir Matting
 - 5 doz. Kosmos Glasses
 - 1/2 doz. Hand Scrub. Brushes
 - 2 Marlin Spikes
 - 2 Tubular Lanters
 - 24 Sheets Emery Cloth
 - 50 lbs. Sal. Soda
 - 30 lbs. Mogul Compound
 - 1 Bale Rags
 - 25 Carbon Lamps
 - 3 Sockets
 - 80 Copper Rivets & Burrs
 - 3 doz. Cakes Soap
 - 1 doz. Sapolia
-

STORES M/S "BAYARD"

- 28 lbs. Rubber Packing
- 14 lbs. Asbestos Packing
- 18 lbs. Gearlock Packing
- 14 lbs. Fiber
- 7 lbs. Leather
- 19 lbs. Waste
- 25 lbs. Sanitary Rags
- 3 lbs. Soft Soap
- 3 Pieces of Bar Iron
- 17 Lamp Wicks
- 1 Bar Solder

- 1 Box Smooth On
- 90 lbs. White Metal
- 240 lbs. Zinc White
- 4 gal. Linseed Oil
- 140 Red Lead
- 60 lbs. Black Paint
- 6 lbs. Chalk
- 230 Electric Lamps
- 75 ft. Lamp Wiring
- 24 Fuses
- 8 Brushes
- 174 Fuses
- 2 Spools of Wire
- 11½ lbs. Magneto Wire
- 2 gals. Gray Paint
- ½ lb. Solder Paste
- 9 gals. Oil
- 10 lbs. Solder

STORES M/S "BAYARD"

- 625 lbs. White Zinc
- 275 lbs. Mast Color
- 150 lbs. Pitch
- 20 gals. Boot Top
- 15 gals. Battle-ship Gray
- 3 gals. Vermillion
- 1 gal. Blue Paint
- 8 gals. Gray Hull Paint
- 5 gals. Stabil Inside
- 1 gal. Canvas Preservative
- 20 gals. Stockholm Tar
- 5 gals. Crude Carbohic Acid

- 10 Gals. Raw Linseed Oil
 - 25 gals. Boiled Linseed Oil
 - 10 gals. Kerosene
 - 5 gals. Bitumastic
 - 5 gals. Japan Dryer
 - 2 gals Turpentine
 - 8 qts. Aluminum
 - 1 gal. Spar Varnish
 - 3 Coils 3" Manilla Rope [67]
 - 2 Coils 2½" Manila Rope
 - 5 lbs. Spunyard
 - 1 Bale Oakum
 - 2 New Patent Cargo Wheels
-

War Trade Board.

Exports Administrative Board.

1435 K Street Washington, D. C.

612595

License No. Jan.14 8

Date Mar. 15 1918

Expires—— 191—

Applicant's No. EMD

UNITED STATES OF AMERICA SHIP'S
STORES LICENSE.

Permission is hereby granted Norway Pacific Line, of 433 California St., San Francisco, to export as per detailed list attached, of Ship's Stores. Nor. Motor Ship "Bayard" total value \$——, from the United States to Sydney & Melbourne, Aust. at —— by any vessel flying —— flag.

This license is issued on the basis of the statements made in your application, and is subject to

the rules and regulations which have been, or which may be hereafter, issued by the Exports Administrative Board.

The above license number must appear on the export bill of lading and export declaration.

EXPORTS ADMINISTRATIVE BOARD.

VANCE C. McCORMICK,

Chairman.

Countersigned:

C. A. RICHARDS,

Director of Bureau of Export Licenses.

By_____.

Original and Duplicate sent to (Applicant, Forwarding Agent).

This License Not Valid Unless Countersigned and Impressed with the Seal of the Exports Administrative Board. This License is Revocable.

Shipped Complete — 191—.

War Trade Board.

612595

Form E A B 14. [68]

Form E. A. B. 49. Application Form A-2
Exports Administrative Board
Bureau of Export Licenses
1435 K Street NW., Washington.

App. No. _____

Disposition _____

Date _____

Drawn By _____

Checked By _____

License No. 612595

Expiration date _____

(Space above this line for official use only.)

Instructions on the back of this sheet should be carefully read before this application is filled in. Answers must be written legibly or typewritten, if possible.

APPLICATION FOR ORDINARY SHIP'S
STORES LICENSE.

Applicant's Reference No. — Date Jan. 7, 1918.

Bureau of Export Licenses,

1435 K Street NW.,

Washington, D. C.

I hereby apply for license to export (1) ship's stores.

We _____ (Quantity.)

of (2) (as per detailed list attached) Valued at (3)

(Goods.)

\$— to (4) Nor M/S Bayard at (5) Sydney & Melbourne Aust.

(Consignee)

(Address)

(6) Goods ~~will~~ be ready for shipment— (7) If

the goods are to be re-exported, state to what country——

(Signed) NORWAY PACIFIC LINE,

By Davison,

(8) Applicant's Address 433 Calif. St.,

San Francisco.

(9) License to be st to P. W. Bellingall, Custom House Broker, 409 Washington St. (10) Address San Francisco. (Over.)

Please Read Carefully Before Filling in Application. This Will Avoid Delay.

(a) A separate application must be made for each country of destination.

(b) A separate application must be made for each commodity. If goods covered by a license are to be shipped in more than one [69] consignment the shipper may use form entitled "Certificate for Partial Shipment against Export License."

(c) To avoid delays, applicants are requested, in case of further communication, to refer to their own reference number and date as well as to the reference number of the Bureau of Export License, if known, and to refer to each application in a separate letter.

(d) The statement in regard to the quantity should be made in definite units of net weight or measure such as tons (of 2240 pounds each), pounds, bushels, gallons, etc., and not in such terms as boxes, cases, sacks, etc. Measurement must be in tons of 40 cubic feet or fraction thereof. Measurement need not be given in the case of goods which are by custom shipped on a weight basis. Description of goods must include number of

packages and contents of each. Values must be in dollars.

(e) Responsibility of exporter.—Failure on the part of the applicant to take reasonable precaution as to the distribution of goods or the granting of an export license based upon the statements contained in this application, will not relieve the consignor from any responsibility to which he may be liable for affording aid or comfort to the enemy.

(f) Applicants are advised, if possible, to send in their applications at least two weeks in advance of the proposed date of ocean shipment, or as much earlier as possible. Export licenses, however, will not be issued more than 60 days before the proposed date of ocean shipment. Ocean bills of lading must bear date earlier than the expiration date shown on the license. If a license expires before a shipment is made and a renewal is desired, the original and duplicate copy of the original license must be returned with an Application Form E, entitled "Application for Renewal of Export License." Original and/or renewal applications [70] will be considered in the order received.

(g) When filled in and signed send this application to the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or to any branch of that Bureau.

(h) Copies of all forms may be secured from the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or from branch office of that bureau at No. 11 Broadway, New York, or from any branch of that bureau.

Ship's Stores of the Norwegian Motor-Ship
"Bayard."

20 Barrels Lubricating Oil
104 Sacks Flour [71]

Exhibit "C."

War Trade Board.
Exports Administrative Board.
1435 K Street,
Washington, D. C.

License No. Jan. 14 8

Date Mar. 13, 1918

Expires 191—.

Applicant's No. EMD

**UNITED STATES OF AMERICA BUNKERS
LICENSE**

Permission is hereby granted Norway Pacific Line, of 433 California St., San Francisco, Cal., to export 550 tons (Five per cent. more or less) of Fuel Oil. Nor. M. S. "Brazil" total value, \$—— from the United States to Wellington, N. Z., and return to S. F. at —— by any vessel flying —— flag.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which made hereafter be issued by the Exports Administrative Board.

The above license number must appear on the export bill of lading and export declaration.

EXPORTS ADMINISTRATIVE BOARD.

VANCE C. McCORMICK,

Chairman.

Countersigned: L. L. RICHARDS,
Director of Bureau of Export Trans.

By_____.

Original and Duplicate sent to (Applicant, Forwarding Agent.)

This License Not Valid Unless Countersigned and Impressed With the Seal of the Exports Administrative Board.

This License is Revocable.

Shipped Complete — 191—

War Trade Board.

Form E A B 14. [72]

San Francisco, California, Jan. 14th, 1918.

Hon. Collector of Customs,

District and Port of San Francisco.

Sir: Complying with the requirements in telegram from the Bureau of Transportation, War Trade Board, allowing the Nor. M/S "Brazil" 550 Tons, 3850 barrels, 161700 gallons of bunker oil, for voyage from San Francisco to Wellington, N. Z. and return, we hereby guarantee that this vessel, the Nor. M/S "Brazil" will proceed from San Francisco to Wellington, N. Z. and after taking on cargo will return directly to the United States, and that its en-

tire cargo shall be discharged at a port or ports of the United States.

AUG. LARSEN X.

Master Nor. M/S "Brazil."

NORWAY PACIFIC LINE, Agency.

F. Wm. Kutter, Secty.

Agents Nor M/S Brazil.

Sworn to before me, this 14th day of January, 1918.

[Seal]

M. J. LAWRENCE,

Notary Public.

Form E. A. B. 49.

Application Form A-2.

Exports Administrative
Board.

Bureau of Export Li-
censes.

1435 K. Street, NW.
Washington.

App. No. _____

Disposition _____

Date _____

Drawn by _____

Checked by _____

License No. _____

Expiration date _____

(Space above this line for official use only.)

Instructions on the back of this sheet should be carefully read before this application is filled in. Answers must be written legibly or typewritten, if possible.

APPLICATION FOR ORDINARY BUNKER
LICENSE.

Applicant's Reference No. ———Date Jan. 7, 1918.

Bureau of Export Licenses,
1435 K Street NW.,
Washington, D. C.

I

We hereby apply for license to export (1) 550
Tons (Quantity.)

[73]
of (2) Fuel Oil Valued at (3) \$ ——— to (4) Nor.
(Goods.)

M/S Brazil at (5) San Francisco, Wellington, N. Z.
(Consignee) (Address)

(6) Goods ~~will be~~ ready for shipment————(7)
If the goods are to be re-exported, state to what
country————Voyage—From San Francisco to
Wellington, N. Z., and return to San Francisco.

(Signed) NORWAY-PACIFIC LINE,

By Davison

(8) Applicant's address, 433 California St., San
Francisco. (9) License to be sent to P. W. Bell-
in all, Custom House Broker, 409 Washington St.
(10) Address San Francisco.

(Over.)

Please read carefully before Filling in Applica-
tion. This will avoid delay.

(a) A separate application must be made for
each country of destination.

(b) A separate application must be made for
each commodity. If goods covered by a license are

to be shipped in more than one consignment the shipper may use form entitled "Certificate for Partial Shipment against Export License."

(c) To avoid delays, applicants are requested, in case of further communication, to refer to their own reference number and date as well as to the reference number of the Bureau of Export Licenses, if known, and to refer to each application in a separate letter.

(d) The statement in regard to the quantity should be made in definite units of net weight or measure, such as tons (of 2240 pounds each), pounds, bushels, gallons, etc., and not in such terms as boxes, cases, sacks, etc. Measurement must be in tons of 40 cubic feet or fraction thereof. Measurement need not be given in the case of goods which are by custom shipped on a weight basis. Description of goods must include number of packages and contents of each. Values must be in dollars. [74]

(e) Responsibility of Exporter.—Failure on the part of the applicant to take reasonable precaution as to the distribution of goods or the granting of an export license based upon the statements contained in this application, will not relieve the consignor from any responsibility to which he may be liable for affording aid or comfort to the enemy.

(f) Applicants are advised, if possible, to send in their applications at least two weeks in advance of the proposed date of ocean shipment, or as much earlier as possible. Export licenses, however, will not be issued more than 60 days before the proposed

date of ocean shipment. Ocean bills of lading must bear date earlier than the expiration date shown on the license. If a license expires before a shipment is made and a renewal is desired, the original and duplicate copy of the original license must be returned with an application Form E, entitled "Application for Renewal of Export License." Original and/or renewal applications will be considered in the order received.

(g) When filled in and signed send this application to the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or to any branch of that bureau.

(h) Copies of all forms may be secured from the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or from branch office of that bureau at No. 11 Broadway, New York, or from any branch of that bureau. [75]

Exhibit "D."

War Trade Board.

Exports Administrative
Board.

1435 K Street, Washing-
ton, D. C.

License No. 612640.

Date—Jan. 14, 1918.

Expires—Mar. 15, 1918.

Applicant's—No. EMD.

SHIP'S STORES LICENSE.

Permission is hereby granted Pacific Line, of 433 California St., San Francisco, Cal. to export as per

detailed list attached (Five per cent, more or less), of Ship's Stores, Nor. M. S. "Brazil" total, \$ — from the United States to Wellington, N. Z. at — by any vessel flying — flag.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter, issued by the Exports Administrative Board.

The above license number must appear on the export bill of lading and export declaration.

EXPORTS ADMINISTRATIVE BOARD.

VANCE C. McCORMICK,

Chairman,

Countersigned:

C. A. RICHARDS,

Director of Bureau of Export Licenses.

By—————

Original and Duplicate sent to (Applicant—Forwarding Agent.

This License Not Valid Unless Countersigned and Impressed with the Seal of the Exports Administrative Board.

This License is Revocable.

Shipped Complete — 1919—.

War Trade Board, 612640.

Form E. A. B. 14.

Port of San Francisco, Jan. 14th, 1918.

I, Aug. Larsen, Master of the Norwegian Motor Ship "Brazil", do solemnly swear that the ship's stores permitted to be laden on board said vessel,

shall not be transferred at sea to any vessel not landed at any foreign port.

AUG. LARSEN, X
Master. [76]

Subscribed and sworn to or before me, this 14th day of January, 1918.

[Seal]

M. J. LAWRENCE,
Notary Public,

Form E. A. B. 49.

Application Form A-2.
Application No. _____
Disposition _____
Date _____
Drawn By _____
Checked By _____
License No. 612,640
Expiration date _____

(Space above this line for official use only.)

Instructions on the back of this sheet should be carefully read before this application is filled in. Answers must be written legibly or typewritten, if possible.

APPLICATION FOR ORDINARY SHIP'S
STORES LICENSE.

Applicant's Reference No. — Date Jan. 7, 1918.
Bureau of Export Licenses,
1435 K Street NW.,
Washington, D. C.

I

We hereby apply for license to export (1)
ship's stores of (2) (as per detailed list attached)
(quantity) (Goods.)

Valued at (3) \$——to (4) Nor. M/S Brazil at (5)
(Consignee)

San Francisco. (6) Goods ~~will~~ be ready for ship-
(Address.)

ment ——. Wellington, N. Z. (7) If the goods are
to be re-exported, state to what country ——.

(Signed) NORWAY PACIFIC LINE.

By Davison.

(8) Applicant's Address 433 California St.,
San Francisco.

(9) License to be sent to P. W. Bellingall (10)
Address Custom House Broker 409 Washing-
ton St. San Francisco. ,

(Over)

[77]

PLEASE READ CAREFULLY BEFORE
FILLING IN APPLICATION. This will avoid
delay.

(a) A separate application must be made for
each country of destination.

(b) A separate application must be made for
each commodity. If goods covered by a license are
to be shipped in more than one consignment the
shipper may use form entitled "Certificate for
Partial Shipment against Export License."

(c) To avoid delays, applicants are requested,
in case of further communication, to refer to their
own reference number and date as well as to the
reference number of the Bureau of Export Licenses,
if known, and to refer to each application in a
separate letter.

(d) The statement in regard to the quantity should be made in definite units of net weight or measure, such as tons (of 2240 pounds each), pounds, bushels, gallons, etc., and not in such terms as boxes, cases, sacks, etc. Measurement must be in tons of 40 cubic feet or fraction thereof. Measurement need not be given in the case of goods which are by custom shipped on a weight basis. Description of goods must include number of packages and contents of each. Values must be in dollars.

(e) Responsibility of exporter.—Failure on the part of the applicant to take reasonable precaution as to the distribution of goods or the granting of an export license based upon the statements contained in this application, will not relieve the consignor from any responsibility to which he may be liable for affording aid or comfort to the enemy.

(f) Applicants are advised, if possible, to send in their applications at least two weeks in advance of the proposed date of ocean shipment, or as much earlier as possible. Export licenses, however, will not be issued more than sixty days before the proposed [78] date of ocean shipment. Ocean bills of lading must bear date earlier than the expiration date shown on the license. If a license expires before a shipment is made and a renewal is desired, the original and duplicate copy of the original license must be returned with an Application Form E, entitled "Application for Renewal of Export License." Original and/or renewal ap-

plications will be considered in the order received.

(g) When filled in and signed send this application to the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or to any branch of that bureau.

(h) Copies of all forms may be secured from the Bureau of Export Licenses, 1435 K Street NW., Washington, D. C., or from branch office of that bureau at No. 11 Broadway, New York, or from any branch of that bureau.

Ship's Stores of the Norwegian Motor Ship "Brazil."

36 Barrels Lubricating Oil.

40 Sacks Flour.

(Bill-Head of Foard-Barstow Ship Chandlery Co.)

San Francisco, Cal., January 14, 1918.

Norwegian M. S. "Brazil."

Cabin & Galley.

3 Bread Pans

5 Laddles

1 Water Dipper

2 Buckets

12 Knives

12 Cups & Saucers

6 Spoons

24 Plates

2 Doz. Tumblers

1 Lamp Shade

120 lbs. Sal. Soda

200 lbs. soft Soap [79]

1 doz. Pkgs. Gold Dust

15 lbs. Cotton Waste

- 25 B San. Rags
 - 1 doz. Candles
 - 1 doz. Tins Metal Polish
 - 1 doz. Lamp Wicks
 - 12 tins Shoe Polish
 - 1 doz. tins Vaseline
 - 1 Qt. Benzine
 - 3 Bath Bricks
 - 500 Paper Napkins
 - DECK.
 - 5 Flags
 - 1 Nautical Almanac
 - 4 pieces Glass
 - 4 Tons Galley Coal
 - 1 Pc. Cotton Duck
 - 12 Pc. Lumber
 - 4 Wire Brushes
 - ENGINE.
 - 10 Gls. Green Paint
 - 1 doz. Pkgs. Gold Dust
 - 2 doz. Cakes Soap
 - 1 bale San. Rags
 - 5 lbs. Cotton Waste
 - 4 doz. Brass Mach. Screws
- (Rubber Stamp:) COPY. [80]

Testimony of F. W. Kutter, for Libelant.

F. W. KUTTER, called for the libelant, sworn.

Mr. FRANK.—Q. Mr. Kutter, you are the secretary of the Norway-Pacific Line? A. I am.

Q. The Norway-Pacific Line is an agency for handling vessels?

(Testimony of F. W. Kutter.)

A. Norway-Pacific Line Agency is the name of the corporation.

Q. That is the name of the corporation?

A. Yes.

Q. As such agent, were you handling the "Bayard" during the time here in controversy?

A. We were.

Q. Were you handling the "Brazil" also?

A. We were.

Q. Who were the owners of the "Brazil"?

A. A. S. Gangerrolf—I don't know the Norwegian pronunciation of it.

Q. Was that a different association, a different set of men, from those that owned the "Bayard"?

A. As far as I know, that is a corporation in Norway; the owners are in Norway. I could not tell whether the same people are interested in that boat as are in the "Bayard."

Q. When I say "the same people," I do not mean that there may not be the same stockholders in both corporations, but they are different corporations, are they not? A. Different corporations.

Q. Are your accounts kept separately for them?

A. Our account is kept separately for each vessel.

Q. That is what I mean.

A. For each vessel the account is kept separately.

Q. What is the measurement carrying capacity of the "Bayard"?

A. It is about 7500 tons measure.

Q. You heard the testimony this morning of Mr. Moore as to his offer of \$400,000 for a voyage from

(Testimony of F. W. Kutter.)

here to Manila, to two ports, and back to San Francisco? A. Yes.

Q. Did you handle, at your end, these negotiations?

A. They were handled through our office. [81]

Q. Now, what was done with respect to them?

A. We cabled to our head office at Christiania, asking them to give us a free hand with the chartering of the boat.

Q. Before you received the reply, what happened?

A. The collision occurred.

Q. What did that do?

A. That stopped all negotiations.

Q. Now, I have here a list of items as to the cost of handling cargo under the charter of May 16, 1917, of this vessel, the "Bayard" on a voyage charter. Is that a true transcript of the expenses as they show upon your books?

A. That is an exact copy of the vouchers covering expenses incurred on that trip.

Mr. GRIFFITHS.—That was May 16, last year?

Mr. FRANK.—May 16, 1917. That is the time the charter was entered into. When was the voyage undertaken? When did she leave here on that voyage? A. Under that charter?

Q. Yes.

A. It was within perhaps a month after the charter was made. I don't know the exact date; about a month after.

Q. Is this the first or the second of the voyages?

(Testimony of F. W. Kutter.)

A. That is the second charter, the charter that she had just finished.

Q. Just finished when she got in? A. Yes.

Q. Just the day before the collision?

A. That is, she had finished discharging the day before the collision.

Mr. GRIFFITHS.—That is the cost of handling cargo at what point?

Mr. FRANK.—I suppose wherever they handled it. The witness will be able to tell you better than I.

Mr. GRIFFITHS.—Q. Have you got the dates of this list of items? This is simply a list of the items without any dates.

A. We can get the dates; we have got all the vouchers.

Q. Have you got the entries as they are made up in your account [82] books?

A. We simply make up a statement of account to our head office of our disbursements. These are the copies of disbursements.

Q. The original copy is submitted to the owners?

A. This is a copy of what was submitted to the owners showing the disbursements.

Q. This was a charter from San Francisco outward—from San Francisco to the Philippines?

A. From San Francisco to the Philippines and return to San Francisco.

Q. Does this cover all the expenses and costs of handling the cargo outward and back—cost of handling the cargo on the entire round trip?

A. On the entire round trip.

(Testimony of F. W. Kutter.)

Q. The second item here is stevedoring discharging \$3,726.45. That would be where?

A. May I look at that?

Q. Yes.

A. That is discharging at San Francisco.

Q. That is when you got back?

A. When we got back.

Mr. FRANK.—Let me see that. Is that discharging? A. Stevedoring.

Q. Stevedoring when? A. At San Francisco.

Q. On the previous voyage, or on this particular voyage? A. On this particular voyage.

Q. It was on that particular voyage and not on the previous voyage?

A. No, these charges were all on that voyage, the previous voyage.

Mr. GRIFFITHS.—Q. What is the first item, that is, loading? A. Loading outward.

Q. Loading at San Francisco? A. Yes.

Q. Then the second is discharging at San Francisco? A. Yes.

Q. Where are the loading items on the other side?

A. The Philippine expenses.

Q. Does that include loading and discharging?

A. That includes the entire expenses in the Philippines; that is what the captain's [83] disbursements were down there; that is the total.

Q. That is the lump figure; that includes everything on the other side: Is that it? A. Yes.

Q. Mr. Kutter, this list that you have here, together with the expenses of the crew, I mean the

(Testimony of F. W. Kutter.)

wages, etc. of the crew, represent the entire cost of the round trip?

A. That would represent the entire cost of the round trip outside of taxes and insurance, of which we have no record here.

Mr. FRANK.—The matter of taxes and insurance has nothing to do with this case.

Mr. GRIFFITHS.—Q. When you render an account to your owners, don't you render it itemized under dates?

A. No, we simply send them the vouchers with an account made up similar to that, without reference to dates.

Q. Is this an account made up for the owners?

A. That is a copy of the statement of disbursements.

Q. I notice the item at the bottom, "Cost of operating vessel," and then there is something taken off.

Mr. FRANK.—That was insurance and things of that sort, and I took it off.

Mr. GRIFFITHS.—All right.

Mr. FRANK.—I offer this in evidence as expenses on a voyage charter. The total amount is \$21,920.70.

(The document was marked Libellant's Exhibit 2.)

Q. You were acquainted at that time, Mr. Kutter, with the cargoes that were offering and the prices that were paid, were you not? A. Partly so, yes.

Q. For an outward voyage, was there much case oil offering?

(Testimony of F. W. Kutter.)

A. We could always charter the vessel for a cargo of case oil.

Q. Well, I mean outside of the charter, putting her on berth?

A. Yes, we could have stood a full cargo of case oil or other [84] commodities; there is always plenty of cargo offering for the Philippines.

(Extra page inserted.)

Mr. FRANK.—On page 72 of the record, your Honor, we have an answer by Mr. Hutter on the 12th and 13th lines, in which he says: “She has carried a mixed cargo 3000 tons of Copra, about 1500 tons of sugar, and a couple of hundred tons of cocoanut oil.” It is agreed that be amended to be 3047 tons of copra—

Mr. GRIFFITHS.—I have it here 3042, Mr. Frank; that must be an error.

Mr. FRANK.—No, I don't think so; it says here 3047.

Mr. GRIFFITHS.—Well, whatever the manifest shows.

(See page 84 of Transcript.)

Q. How much case oil did you carry?

A. She has carried 131,000 cases.

Q. What was the market rate at that time for case oil? A. About 85 to 90 cents a case.

Q. Now, on your homeward voyage, were there

(Testimony of F. W. Kutter.)

cargo offerings freely? A. Plentifully.

Q. What were they? A. Copra, principally.

Q. And sugar?

A. Sugar and cocoanut oil, etc.

Q. How many tons or copra could she carry?

A. She has carried a mixed cargo 3000 tons of copra, about 1500 tons of sugar, and a couple of hundred tons of cocoanut oil.

Q. What was the going price then for the copra per ton?

A. The copra was offering as high as \$80 a ton.

Q. And sugar? A. Sugar from \$35 to \$50.

Q. And cocoanut oil? A. \$45 to \$50.

Q. Was the Government interfering in anywise with the "Bayard" at that time?

A. No, other than the charter would have to be submitted for approval; that is all. [85]

Q. If you put her on dock she would not have to submit to anything for approval?

A. The same procedure would have to be gone through, subject to approval of the shipping board.

Q. If you put her on the dock?

A. On the berth at that time they were not interfering very much, when it first started.

Q. Of course, there is a difference between a time charter and a voyage charter with regard to the expense that the ship is under? A. There is.

Q. In other words, all of these expenses that I have given you a list of would be eliminated in the case of a time charter? A. Yes.

(Testimony of F. W. Kutter.)

Q. The owner would not stand those expenses, but the charterer would?

A. The charterer would have to pay them.

The COURT.—It would not make any difference in the amount?

A. No, the amounts would practically work out about the same.

Mr. FRANK.—Q. What do you mean?

A. That is, the expenses of the handling of the cargo would be the same.

Q. But it would be transferred to the other party?

A. The charterer would assume all those expenses.

Mr. FRANK.—So that your Honor will understand the situation, while the 45 shillings is less, the expenses are also less, so that it would affect the profits in that way.

Mr. GRIFFITHS.—It would not work out then. The regular allowance of the shipping board for dead weight tonnage was 45 shillings per ton.

Mr. FRANK.—Our position is at that time there was no such restriction.

Mr. GRIFFITHS.—Mr. Kutter, this proposed charter to Mr. Moore was submitted by cable to your owners: That is, you had to have their consent before the charter was signed: That is true, is it not?

A. We always submit charters for their approval; that is, we have their approval before chartering.

Q. You never, in fact, did receive the consent of the owners to [86] that charter, did you?

(Testimony of F. W. Kutter.)

A. On account of the cable interruption—it took all the way from one week to two weeks before we had replies from Norway.

Q. Tell me when you had authority to pledge this ship to return to this port and here discharge her cargo?

A. That followed the charter party which was made up after agreeing that the vessel would go from San Francisco to Australia and return.

Q. Which charter party was that?

A. When the vessel was under charter to Australia, January 4.

Q. She was sailing for the shipping board?

A. No, she was not sailing for the shipping board; she was sailing for G. W. McNear, with the approval of the shipping board.

Q. When did you get the approval of the shipping board on that charter party?

A. I could not say the exact date; it was just before the charter party was made up.

Q. When was the charter party made up?

A. The 4th of January.

Q. When was it you got the consent of the owner to that charter party?

A. It would be shortly before that.

Q. Probably along about the 1st of January?

A. Along about that time.

Q. Now, as I take it, you understand that the consent of the owners for you to execute a charter party to Australia and back naturally carries with it the consent to agree by separate agreement with the

(Testimony of F. W. Kutter.)

war trade board that the vessel would come back?

A. We naturally had to under the charter party—we had to agree to that.

Q. Now, then, there was no time between November 3d and January 1 when you had authority to pledge that vessel to come back to this port, was there? A. We did not ask for it.

Q. But as a matter of fact you did not have it, did you?

A. We did not ask for it. We never ask for those agreements until a few days before the vessel sails. [87]

Q. It would take you a couple of weeks to get cable connection with Norway, wouldn't it?

A. When we cable for authority to charter, yes.

Q. Now, then, regardless of whether you ask for it or not, you did not have it until January 1?

A. Under this particular charter, we did not have it until the charter party was made up, which as I say, followed—necessarily followed our agreement to the Government to return the vessel.

Q. You said that you are agent also for the "Brazil." How long have you been agent for her?

A. We have been agent for the "Brazil" since she has been operated out of here, which was about October or November, 1916.

Q. To whom were you reporting back at that time on the "Brazil"?

A. How do you mean, reporting back?

Q. Who were her owners then?

A. Our head office is Fred Olson & Company, in

(Testimony of F. W. Kutter.)

Christiania, with whom we correspond.

Q. That is Fred Olson & Company, Prinsengade, Christiania, Norway? A. Yes.

Q. They are the owners?

A. They are the managing owners.

Q. Aren't they managing owners for both the "Brazil" and the "Bayard"? A. Yes.

Q. And have been during all of that time?

A. Yes.

Q. Did you submit to them the charters of both vessels, to Fred Olsen & Co., for approval?

A. They are the only ones we correspond with.

Q. They are the only ones you correspond with?

A. Yes.

Q. If it became necessary for you to sign or desirable for you to sign one of these bunker agreements, you would get your permission to sign either directly on that issue or through the charter party from Fred Olsen & Co., would you? A. Yes.

Q. Do you know of any change in ownership, aside from the managing owners during the period when you represented the "Brazil"?

A. Not to my knowledge. [88]

Q. What does the word "Aktieselskapet" mean?

A. Captain Bryn can tell you.

Mr. BRYN.—A limited company.

Mr. GRIFFITHS.—What does "Bonheur" mean?

Mr. BRYN.—It is a French word for "good luck."

Q. How do you know that the "Brazil" was

(Testimony of F. W. Kutter.)

owned by Gangerrolf? Lloyds shows the "Brazil" under Aktieselskapet Bonheur.

A. The "Brazil" is not classed under Lloyds. She is carried in the Norwegian Veritas, which says Gangerrolf is the owner.

Q. Let me ask you this: When was the "Brazil" built?

A. I could not say. I think about 1915 or 1914.

Q. 1914? A. 1914 or 1915, I don't know which.

Q. What is her gross tonnage?

A. I have not the exact figures in my head.

Q. She is a twin screw, isn't she? A. Yes.

Q. Oil engines? A. Deissel motors.

Q. They are oil engines?

A. That is what they classify them, oil engines.

Q. And the "Bayard" also is twin screw, and classified as oil engines? A. Yes.

Q. The "Bayard" was built in 1915?

A. Yes.

Q. Did you say what the gross tonnage of the "Brazil" was?

A. I don't recall it; I have not the figures in my head.

Q. Do you know approximately? Is it over 3000?

A. The gross tonnage?

Q. Yes. A. Yes.

Q. Is it over 3000 tonnage? A. Yes.

Q. Now, when did you get from Fred Olsen &

(Testimony of F. W. Kutter.)

Co.—the “Brazil” entered here November 13th, didn’t she?

A. That is according to the records. I have not the dates clear in my head; sometime in November.

Q. When did you get permission as to the “Brazil,” to sign this agreement that she would return to port, from Fred Olsen & Co.?

A. The charter of the “Brazil” was made up at the same time as [89] the “Bayard’s.”

Q. They were made up at the same time and submitted at the same time? A. Yes.

Q. How was the “Bayard” occupied between December 21 and early January?

A. How was she occupied? Q. Yes.

A. Getting ready for the voyage, I suppose—laying idle getting ready for the voyage. If I recall correctly our agreement with the charterers, they were not to take her until a certain date in January.

Q. Did you have no opportunity to charter her earlier than that? A. Earlier than what?

Q. Earlier than January? That voyage began on January 17th and the repairs were completed December 21. I understand there was a great demand for vessels.

A. We could not negotiate for a charter while the vessel was under repairs, not knowing just when she would be ready.

Q. Did you have to wait until the repairs were absolutely completed?

A. We would. We could not tell when the vessel would be completed.

(Testimony of F. W. Kutter.)

Q. Getting back to this, I want to know whether you are perfectly certain as to the matter of ownership. You are relying on the Norwegian Veritas as to what the ownership is?

A. The Norwegian Veritas shows Gangerrolf is the owner; I don't know whether that is correct or not. They are different companies as far as I remember—they are two different companies.

Q. There is the same managing owner?

A. Yes.

Mr. FRANK.—You do not contend that one managing owner could not manage half a dozen different companies?

Mr. GRIFFITHS.—No. My theory of the case is this, that there was trouble on between the owners and the War Trade Board, and that accounts for the identity of dates.

Q. Now, Mr. Kutter, I think I understood you to say that early in November the shipping board was not interfering very much with [90] charters. What do you mean by the words "very much"?

A. They were not as strict as they are at the present time.

Q. You proposed to submit this particular charter with Mr. Moore to the shipping board, didn't you? A. We did.

Q. And you understood that you would have to have the approval of the shipping board of that charter before the vessel could sail?

A. That was the general understanding, that all

(Testimony of F. W. Kutter.)

the charters were to be submitted to the shipping board for their approval.

Q. And that any charter, except one for your own account, would have to be submitted to the shipping board for approval?

A. If I remember correctly that is the way it was.

Mr. FRANK.—That is our case. Have you got any other testimony, Mr. Griffiths?

Mr. GRIFFITHS.—Not here. I want to take the deposition of J. B. Smull, who is a member of the charter committee of the United States Shipping Board in New York.

Mr. FRANK.—Now, let me make a suggestion. I want to bring this case to an issue now. From the suggestion made this morning by Mr. Griffiths, I consider that what he proposes to prove is utterly immaterial. If he will state what he proposes to prove we can determine that now, and not have the delay or the expense of going away and taking these depositions. I suggest that you give us now what it is you propose to prove by this man.

Mr. GRIFFITHS.—I want to take the testimony of J. P. Smull, a member of the charter committee of the United States Shipping Board, Custom House, New York, who will testify that the committee and the shipping board would not have approved a lump-sum charter any time between November 3rd and December 21, 1917, and before and after,

and would only have approved a time charter not to exceed 45 shillings per dead weight ton per month. We have got the testimony of Mr. Kutter himself that all the charters had to be submitted for approval. [91]

Mr. FRANK.—We will argue the case afterwards. The way it appeals to me is this, that this man cannot say what he would or would not have done; what he did is of record. To turn around and now say at some previous date he would not have done a certain thing is rather, I think, out of order. I do not think that would be material testimony. In fact, there is not a single man that had the say of it at all; it is a committee. The testimony here is to the effect that there were charters that were made at that time and were approved at that time, and unless there was some particular peculiar thing that had to do with a particular vessel under particular circumstances as a matter of course it would be approved. It is a question of what was done, and not of what would be done. We can only judge of what would be done by what was done. This sort of business, as to what he would not have done at such and such a time, I do not think is proper.

Mr. GRIFFITHS.—The “*Dicta*” was the only Norwegian vessel in Mr. Page’s list and her charter was a time charter, not a lump-sum charter at all.

Mr. FRANK.—If you think you have any advantage in that we will argue that, but this is addressed to the proposition of taking a man’s testimony that

he would not have done such a thing at a certain time in the past.

Mr. GRIFFITHS.—I do not see how else we can get at it. All I want to do is to get at the truth about this demurrage. If you are entitled to demurrage when the ship was free to sail, all right; but if, according to the general impression, the Norwegian vessels at that time were tied up by reason of some difficulty between the American Government and the Norwegian owners, and we can get at that, I want to know it. I do not think that a vessel should be rewarded by heavy demurrage for her reluctance, or the refusal of her owners to comply with demands of the United States Government [92] in these war times.

Mr. FRANK.—That is all true enough, so far as that is concerned, but the shipping committee had nothing to do with any difficulty that might have arisen between the United States Government and the Norwegian Government. That is entirely a matter of the State Department. I am not attempting to deprive you of any testimony that is material or any testimony that is proper, but I do not want to be driven to the expense of going to New York to take testimony that will prove to be utterly immaterial and not to be considered by the Court. I would like to submit that proposition to the Court for a ruling upon the offer that is now being made, before we go any further.

The COURT.—What is the offer—that it is to prove by this witness Smull that the board was not approving, had not approved, and would not ap-

prove of lump-sum charters for Norwegian vessels that you have just named?

Mr. GRIFFITHS.—No, broader than that. I will repeat it in just exactly the words I stated: To prove by J. B. Smull, a member of the charter committee of the United States Shipping Board at the Custom House at New York, that the committee and the shipping board would not have approved a lump sum charter any time between November 3d, 1917, and December 21, 1917, and before and after, and would only have approved of time charters at not exceeding 45 shillings per dead weight ton per month.

The COURT.—And was not approving other charters?

Mr. GRIFFITHS.—That I cannot say. This is the statement of proof to be made that I have just stated. Of course, I am perfectly willing for Mr. Frank's representative there upon this deposition to go into it thoroughly. All I want to know is whether that boat was free to sail. If it was, that is the end of the story. I do not believe that it was.
[93]

Mr. FRANK.—I am making my objection to your offer.

The COURT.—I would prefer that your proof should include both as to whether they had approved during this period time charters—as to whether they had not approved or had refused to approve them, covering all cases during that period in regard to charters of this kind.

Mr. GRIFFITHS.—The broader it is the better I would like it.

The COURT.—If they were approving charters for other vessels, to say they would not approve the charter for this vessel, of course, would not prove much. What time will that take?

Mr. FRANK.—That is all the testimony you have?

Mr. GRIFFITHS.—That will finish our case.

Mr. FRANK.—Let it be put over four weeks.

The COURT.—Very well.

[Endorsed]: Filed June 20, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [94]

[Title of Court and Cause.]

(No. 16,303.)

(Deposition of Frederick Johan Ellertsen, a Witness Called on Behalf of Libelant.)

BE IT REMEMBERED that on Monday, January 14, 1918, pursuant to stipulation of the counsel hereunto annexed, at the office of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc. Frederick Johan Ellertsen, a witness called on behalf of the libelant.

Nathan H. Frank, Esq., appeared as proctor for the libelant, and F. P. Griffiths, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of [95] the libelant at the office of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Monday, January 14, 1918, before Francis Krull, a United States Commissioner for the Northern District of California and in shorthand by E. W. Lehner.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [96]

(Deposition of Frederick Johan Ellertsen.)

FREDERICK JOHAN ELLERTSEN, called for the libelant, sworn.

Mr. FRANK.—Q. What is your age, Mr. Ellertsen? A. Twenty-nine.

Q. What is your occupation?

A. Now it is first officer, but at the time of the collision it was second officer.

Q. You were second officer of the “Bayard” at the time of the collision? A. Yes.

Q. And now first officer of the “Bayard”?

A. Yes.

Q. The “Bayard” was at anchor out in the bay?

A. Yes.

Q. What had she been doing before she went out in the bay?

A. She was discharging cargo at the sugar refinery.

Q. How long before the collision was it that she had gone out into the bay and come to an anchor?

A. The same day.

Q. At the time of the collision were you on deck?

A. Yes, I was on deck.

Q. Did you observe your lights? A. Yes.

Q. I mean your anchor lights?

A. Yes, just before the collision I observed the lights.

Q. What was their condition?

A. They were burning bright.

(Deposition of Frederick Johan Eliertsen.)

Q. How were they hung? In places fixed specially on the vessel?

A. Yes, fixed places, fixed by falls and halyards.

Q. What is the height of the funnel?

A. The forward one is 38 feet and the after one 17 feet.

Q. Above the deck? A. Above the deck.

Q. Is that above the deck or above the water?

A. No, above the deck.

Q. After the "Beaver" collided with you, state whether or not she swung?

A. She caught under our starboard anchor chain and went full speed astern, and the tide, with her going full speed [97] astern, made her swing against our starboard side.

Q. Did she do any damage then?

A. Yes, she smashed our accommodation ladder.

Q. I understand she ran under your anchor chain? A. Yes.

Q. Did the vessels drift?

A. Yes, when she went full speed ahead, our anchor lost its grip in the ground, on the bottom, and she started to drift—both the vessels.

Q. After they had been brought up and the "Beaver" had left you, did you employ any tugs to take you back to your anchorage?

A. We had been laying at a safe anchorage before and we had to order a tug to take us back again. We drifted out into the fairway.

Q. You drifted out into the fairway?

(Deposition of Frederick Johan Ellertsen.)

A. Yes, toward Goat Island.

Q. At the time of taking you back, state whether or not there was a hawser that was injured or damaged belonging to your vessel?

A. Yes, there was a hawser, manilla rope, that was badly strained.

Q. Where did she strike you?

A. On the starboard bow.

Q. Did considerable damage, did she?

A. Considerable damage, yes.

Q. When are you going to sea?

A. I expect on Thursday.

Q. She has been fully repaired and is ready to go to sea? A. Yes.

Q. How was the atmosphere at the time of this collision?

A. It was quite visible, clear; you could see the lights ashore; we could see the Ferry Building and we could see the lights of the anchored steamers laying all around.

Q. How about the other side, the Oakland side?

A. Yes, there were lights, too.

Q. You could see lights there?

A. We could see the lights, [98] the cable crossing lights.

Q. Did you see the "Beaver" when she first left her dock?

A. I saw her immediately before she struck, a few minutes before.

(Deposition of Frederick Johan Ellertsen.)

Cross-examination.

Mr. GRIFFITHS.—Q. What is the length of the “Bayard”?

A. I believe it is 338 feet; I couldn't exactly say her measurements, but I believe it is that.

Q. You know it was over 150 feet? A. Yes.

Q. What is her beam?

A. It would be about 40, something like that.

Q. And her draft?

A. Her draft loaded is 21 feet.

Q. Where was the forward light hung? You say you had a regular place for it. Where was that place? A. On the stay.

Q. On the stay? A. Yes.

Q. Where was the after light hung?

A. On the flag pole aft.

Q. That was right at the stern? A. Yes.

Q. What kind of lights were they?

A. They were anchor lights burning kerosene.

Q. What color? A. White.

Q. How long before the collision had you noticed the lights particularly?

A. Just before she struck, about a minute or two before she struck.

Q. When had they last been filled with oil, do you know? A. Every night.

Q. Had they been filled that night? A. Yes.

Q. What was the time of the collision?

A. Seven-thirty.

Q. And when had they been set?

A. At sunset.

(Deposition of Frederick Johan Ellertsen.)

Q. Had they been set under your direction?

A. No.

Q. Who had put them up?

A. The boatswain put them up.

Q. The boatswain? A. Yes, sir. [99]

Q. Did you have a watch on deck at the time of the collision?

A. Yes, we had a watch on deck.

Q. Who was it? A. The boatswain.

Q. What is his name? A. T. Pentland.

Q. Do you know where he is now?

Mr. FRANK.—That is immaterial. We will produce him when the time comes.

Mr. GRIFFITHS.—Is he by the boat now?

A. Yes, he is by the boat now?

Q. Where is the "Bayard" now?

A. Pier 39.

Q. What is she doing there?

A. Taking in cargo.

Q. Where were the repairs completed?

Mr. FRANK.—You have all that, Mr. Griffiths; she was repaired under an agreement between us at the Union Iron Works; all that detail is a matter of agreement between us.

Mr. GRIFFITHS.—I know you had an agreement for repairs but I didn't know when the repairs were completed. That would not show in the agreement.

Mr. FRANK.—That would not show in the agreement. If he knows. There will be no dispute between us as to that.

(Deposition of Frederick Johan Ellertsen.)

Mr. GRIFFITHS.—How long has she been loading? A. She is loading now.

Q. How long has she been loading?

A. She came down to San Francisco the day before yesterday, Friday, and she has been lying up at Point San Pablo a couple of days loading oil.

Q. Deck oil? A. Deck oil.

Q. Did you have a lookout at the time of the collision? A. I was standing on deck.

Q. You were standing on deck? A. Yes, sir.

Q. No one else? A. Not that I know of.

[100]

Q. Where were you stationed; whereabouts on the deck? A. On amidships.

Q. Amidships? A. Yes.

Q. Were you the only man on deck at the time?

A. I couldn't say that.

Q. How long before the collision did you observe the "Beaver"? A. Just a few minutes before.

Q. Did you do anything to attract her attention to your presence?

A. No; there were lights all over the ship; there was a big cluster at the gangway and all the lights in the rooms were lighted.

Q. And how long had you been anchored there at the time of the collision?

A. She came out there the same day.

Q. She was anchored the same day as the collision? A. Yes.

Q. How was the tide running at the time?

A. Ebb tide, pretty strong.

(Deposition of Frederick Johan Ellertsen.)

Q. Strong ebb? A. Yes.

Q. Do you know of any damage to the machinery of the "Bayard"? A. I couldn't say.

Q. Who was the owner of the "Bayard"?

A. Fred Olsen of Christiania; I think the company is the Aktieselskapet Bonheur.

Mr. FRANK.—Q. Fred Olsen is the manager?

A. The manager.

Mr. GRIFFITHS.—Q. Do you know whether that company is also the owner of the "George Washington"? A. I don't think it is. [101]

United States of America, State and Northern
District of California, City and County
of San Francisco,—ss

I certify that, in pursuance of stipulation of counsel on Monday, January 14, 1918, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the office of Nathan H. Frank, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Frederick Johan Ellertsen, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and Nathan H. Frank, Esq., appeared as proctor for the libelant, and F. P. Griffiths, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the [102] cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 24th day of May, 1918.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed May 24, 1918. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [103]

[Title of Court and Cause.]

No. 16,303.

(Deposition of Oliver Pehr Rankin, for Claimant.)

BE IT REMEMBERED: That on Friday, May 10, 1918, pursuant to notice of counsel hereunto annexed, at the offices of McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Oliver Pehr Rankin, a witness called on behalf of the claimant.

Nathan H. Frank, Esq., appeared as proctor for the Libelant, and F. P. Griffiths, Esq. appeared as proctor for the claimant, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the claimant at the offices of McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Friday, May 10th, 1918, before Thomas E. Hayden, a

(Deposition of Oliver Pehr Rankin.)

United States Commissioner for the Northern District of [104] California, and in shorthand by Wm. Barnum.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to the materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.)

Mr. GRIFFITHS.—I would like to have the record show before the Commissioner leaves that the deposition is taken at six o'clock, and that we have waited in the meantime while Mr. Irving Frank communicated with Mr. Nathan Frank, who will come here as soon as he can.

Mr. NATHAN FRANK.—That was about quarter to five.

Mr. GRIFFITHS.—That is, the notice of the deposition was served at a quarter to five for 5:15.

Mr. FRANK.—Well, I think that will be all right.

Mr. GRIFFITHS.—The usual stipulation, Mr. Frank.

Mr. FRANK.—Yes. [105]

(Deposition of Oliver Pehr Rankin.)

OLIVER PEHR RANKIN, called for claimant, sworn.

Mr. GRIFFITHS.—Q. You are now a member of the Naval Reserves, are you? A. I am.

Q. Have you received a call to service today?

A. I have.

Q. When do you have to leave San Francisco?

A. Immediately.

Q. That is you are leaving when?

A. The words of the order are "immediately."

Q. When are you actually leaving?

A. On the 11 o'clock train to-night.

Q. Were you master of the steamer "Beaver" on November 3, 1917? A. I was.

Q. Did you leave on that day for a voyage to Portland. A. We did.

Q. From what dock, as you left San Francisco, did you leave? A. Pier 40.

Mr. FRANK.—Was it Pier 40 or 30?

A. Pier 40.

Mr. FRANK.—It is Pier 30 in your answer.

Mr. GRIFFITHS.—Are you certain about the pier? A. Absolutely certain.

Q. Absolutely certain it was pier 40? A. Yes.

Q. Were you headed in the pier?

A. Yes, head in.

Q. How did you come out. A. Backed out.

Q. What time did you back out?

A. About 7 P. M.

Q. What would you say of the tide at that time?

A. Strong ebb.

(Deposition of Oliver Pehr Rankin.)

Q. Do you recall when the end of the ebb was?

A. It had about two hours to run I think.

Q. As you backed out from the pier how did your vessel move, what was your movement?

A. The stern was carried rapidly with the flow of the tide.

Q. How were your engines working?

A. The engines were working full speed.

Q. Astern? A. Yes. [106]

Q. That is, you backed off in what general direction?

A. The tide governs the direction; in this case to the northwest.

Q. How far to the northwest did you back from pier 40?

A. That is the approximate direction, that northwest.

Q. Yes, I understand that. A. I backed until the ship was approximately *alined* with the piers.

Mr. FRANK.—You mean vertical with the pier.

Mr. GRIFFITHS.—You mean parallel with the piers? A. With the face of the line of the piers.

Q. Then what did you do captain?

A. Came ahead full speed, with the helm hard astarboard.

Q. What was the purpose of moving her hard astarboard?

A. To execute the swing to the left, a left-hand semi-circle.

Q. That got your vessel on what course?

A. Head outward.

(Deposition of Oliver Pehr Rankin.)

Q. Toward the Gate. A. Toward the Gate.

Q. Did you observe any vessel anchored to your port as you swung around to her starboard helm?

A. I did.

Q. What was the vessel?

A. The "George Washington."

Q. Do you recall approximately where she was anchored with reference to the piers?

A. About off 30 or 32, I think.

Q. What course did you take with reference to her?

A. I went around her, leaving her on my port side, the left-hand side.

Q. Were you still on your hard starboard helm?

A. Yes, sir.

Q. What next happened captain, after you cleared the "George Washington?"

A. I saw the loom of another vessel on the port bow.

Q. About how many points off your port bow, if you recall? A. I should say roughly, a point.

Q. That was the vessel which afterward turned out to be the "Bayard"? A. Yes.

Q. What orders did you give upon seeing the loom of this vessel?

A. Ordered the helm a port, and reversed the engines full speed. [107]

Q. Did you see any lights on the "Bayard" before observing her loom? A. No.

Q. What was the state of the atmosphere on this occasion? A. Hazy, with passing fog.

(Deposition of Oliver Pehr Rankin.)

Q. Were you on the bridge of the "Beaver" when you left the pier? A. I was.

Q. Did you remain there continuously until the accident? A. I did.

Q. Who else, if anyone, was on the bridge?

A. The third officer.

Q. What was his name? A. Rader.

Q. What, if any, lookout did you have posted?

A. An able seaman in the bow.

Q. On the end of the ship, or where?

A. On the forecastle head.

Q. Did you receive any reports of lights from the "Bayard" from the third officer? A. No sir.

Q. Did you from your lookout on the forecastle-head? A. No sir.

Q. What lights did you have on the "Beaver"?

A. The regulation running lights; green light to starboard, red light to port; white mast-light on the foremast, with the range light on the main mast.

Q. What occurred after you put your helm apart and reversed your engines upon observing the loom of the "Bayard"?

A. The ship continued her swing against the helm and did not immediately respond to her port helm.

Q. Why not.

A. On account of the momentum she had already gotten and the heavy tide that was running, strong tide.

Q. Did collision ensue? A. It did.

Q. How did the vessel strike?

(Deposition of Oliver Pehr Rankin.)

A. Head on, almost directly.

Q. You hit the "Bayard" almost head on?

A. A little on the starboard bow, close to the stem.

Q. What happened to your vessel?

A. The two vessels swung together, our port-side against her starboard side.

Q. Describe what you did then?

A. We allowed our engines to continue back full speed until our headway was destroyed; we [108] backed clear. In the meantime I ascertained what ship it was. After the collision we asked him if he required assistance and he said he did not.

Q. Then what did you do?

A. Backed clear. It was reported to me our steering gear was out of order.

Q. You mean after the collision?

A. After the collision.

Q. Then what did you do?

A. I brought the ship to anchor in order to make investigation.

Q. Captain, assuming that the anchor lights of the "Bayard" were displayed on that occasion how can you explain your failure to observe them before observing the loom of the vessel?

A. By a passing patch of fog over the "Bayard" or by an eclipse of her lights by the "George Washington," which lay between the "Beaver" and the "Bayard" as we were swinging.

Q. How long did it take you after you came around the "George Washington" to get to the "Bayard"?

(Deposition of Oliver Pehr Rankin.)

A. I would judge a minute and a fraction thereof.

Q. How long have you been going to sea, Captain? A. Since December, 1900.

Q. How long have you held master's papers?

A. I think since 1906.

Q. How long have you been master of the "Beaver"? A. Since April 7, 1917.

Q. What other vessels had you had command of before that time? A. The "Rose City."

Q. For how long? A. About five years.

Q. Any other vessels? A. Not as master.

Q. Have you ever been involved in a collision before as master? A. Never.

Q. Captain, before leaving the dock on that evening did you take any observations with reference to anchored vessels in the Bay, or as to conditions of the Bay, or not?

A. I did, from the end of the pier.

Q. You went out to the end of the pier for that purpose? [109] A. Yes.

Q. Did you observe the lights on the "Bayard"?

A. I saw lights I concluded must have been the "George Washington's" lights.

Q. Did I ask you when you received your notice to report in the Naval Reserves?

A. You did not.

Q. When did you receive your notice?

A. At 11 A. M. to-day.

Q. You are a Lieutenant Commander in the Naval Reserves.

(Deposition of Oliver Pehr Rankin.)

A. Under orders in the Naval Reserves; orders to report to Portland, Oregon.

Q. From whom did your orders come?

A. From the supervisor for the Naval Auxiliary.

Q. You are now a lieutenant commander in the Navy? A. In the Naval Reserve Forces.

Cross-examination.

Mr. FRANK.—Q. Did I understand you to say you went out at full speed? A. Yes sir.

Q. You were proceeding at full speed at the time you first caught sight of the "Bayard"?

A. Yes.

Q. And you changed your engines to full speed astern when the collision was imminent, when you knew the collision was imminent: Is that right?

A. When I saw this vessel I reserved the engines full speed.

Q. When you saw her you knew the collision was imminent, didn't you? A. Yes.

Q. Did I understand you to say that it was the fog that hid the vessel from you?

A. Not directly so.

Q. What do you mean by that answer?

A. That I am not sure that it was the fog, or if it was an eclipse of the lights by this other ship.

Q. At any rate according to your present testimony you were sensible of the fact if there was a fog that must have been the cause of it? A. Yes.

Q. When you started to leave the dock, what was your position [110] on the deck of the vessel. A. On the bridge.

(Deposition of Oliver Pehr Rankin.)

Q. Did you leave the bridge at any time?

A. I did not, not prior to the collision.

Q. Was the lookout that you spoke of in the bow of the vessel the only lookout that you had?

A. Excepting the third officer.

Q. Where was he? A. On the bridge.

Q. On the bridge with you? A. Yes.

Q. Then you had no other person acting as lookout except the man in the fore-castle-head?

A. No.

Q. What other men were on the hurricane deck, or on the bridge?

A. The quartermaster, if not at the wheel, was busy with the incidentals around the bridge.

Q. That was all that were on the deck?

A. You said hurricane deck.

Q. Yes. A. The chief officer was there.

Q. Also on the bridge?

A. He came on the bridge.

Q. When?

A. Just as we were about to strike the ship. The sailors were engaged about the decks securing the cargo again.

Q. Does that account for the whole crew?

A. The second officer was aft.

Q. Where was he?

A. In the after end of the upper deck.

Q. What do you mean by the upper deck, the hurricane deck? A. Yes.

Q. What was he doing?

A. That is his position on leaving the dock.

(Deposition of Oliver Pehr Rankin.)

Q. What was he doing, what was his purpose here?

A. Superintending the sailors who were hanging the lines out.

Q. Now, have you accounted for everybody?

A. The carpenter was on the fore-castle-head.

Q. Is that all?

A. That accounts for the deck crew, with the exception of the man at the wheel.

Q. And that was the position of these people when you started to back out of the dock and during the time you were backing out? [111]

A. Yes.

Q. And also during the time you were going forward up to the time of the collision? A. Yes.

Q. Did you observe any other vessels besides the "George Washington" there? A. No.

Q. Wasn't there a third vessel out there?

A. I had seen several more out there in the day time before dark, further to the southeast.

Q. None to the northward of the "Bayard" or the "Washington"?

A. I don't remember; there was a couple of scows at work on the submarine cable between Goat Island and the mainland. I noted her presence out there.

Q. Where was she located with reference to these vessels?

A. I imagine she was about midway across.

Q. Just indicate with a letter "A" what you consider to be pier 40, what you understand to be pier 40? A. Yes; this is pier 40.

(Deposition of Oliver Pehr Rankin.)

Q. Put the "A" off to the end, mark it there: That would be right, would it? A. Yes.

Q. Now indicate where in your opinion the "George Washington" lay with the letter "B."

A. You wish it to face you?

Q. Mark it "G. W." instead of "B"?

A. Yes.

Q. Indicate in your opinion where the "Bayard" was; indicate that with a letter "B"? A. Yes.

Q. Where was the barge that you recollect?

A. The cable barge I think was in this locality.

Mr. FRANK.—We will call that "C. B."

Q. Now just indicate about what your course was—before you made that heavy mark—did you strike her end on?

Mr. GRIFFITHS.—He said practically head on—those are the words he used in the deposition.

Mr. FRANK.—Q. You think you struck her head on; as that is indicated by the line running out from "A" over to the [112] object "B"?

A. Practically head on.

Mr. GRIFFITHS.—Q. What do you mean by that qualification? A. It was so near that—

Q. (Intg.) What do you mean was practically head on, to which side was it more than the order, was it more on the port or starboard?

A. I think the fore and aft lights of the ship were practically coincident then. I know of no term to better express it.

Mr. FRANK.—Q. If that is so, and you were swinging on a starboard helm, which would have

(Deposition of Oliver Pehr Rankin.)

thrown you on the starboard side of that vessel, why did you port your helm, which would have counteracted your starboard swing?

A. There was not enough room to clear by continuing on the starboard helm between ourselves and the "Bayard" with the strong ebb tide.

Q. What was the reason you reversed to port?

A. By continuing with the starboard helm we would have sunk the "Beaver"; so we lay ourselves broadside across the stream of the "Bayard."

Q. That would have scraped across the bow?

A. It would have been a most awful kind of a blow. It would have ripped her side out. The only solution in getting away was porting the helm hard aport.

Q. I understand the same thing from the position you have placed on this map, you would have hit the "Bayard" whether you were port or starboard, according to this you were coming directly forward, you were on a port swing, were you not, when you first sighted her?

A. As we trimmed her from starboard to port.

Q. And threw your vessel to port? A. Yes.

Q. When you have thrown your wheel to port you had to counteract that swing before you got any effect upon your vessel, so then wouldn't it have been a better way to go on the port-side instead of the starboard?

A. We could not have done it; there was no room?

Q. Why.

(Deposition of Oliver Pehr Rankin.)

A. Because of the strong ebb tide; that absolutely [113] precluded any possibility of our clearing her that way.

Q. Why didn't it have the same effect on the other side?

A. Because it was setting us down toward the ship all the time; it was setting right against her bow, right across her bow.

Q. This theory of the manner in which you were approaching her is the result of the quick observation that you made just before the collision, is it not; you have nothing else to base it upon, with reference to your position, as to the direction in which you were approaching the "Bayard," when you first saw her?

A. We were heading—we would hit—

Q. (Intg.) I don't want to argue the matter with you. We are trying to get your statement of the facts as you observed them, not your conclusions as you are trying to give now.

Mr. GRIFFITHS.—Let the witness answer.

Mr. FRANK.—Q. Read the question.

(Last question repeated by the Reporter.)

A. No.

Q. What is it based on?

A. I had an idea of direction from the loom of the lights of the San Francisco water front, as well as our own compass.

Q. Your compass wouldn't serve to fix the direction with relation to the position of the "Bayard" at all, would it?

(Deposition of Oliver Pehr Rankin.)

A. By giving us our own heading.

Q. What was your compass direction?

A. It was approximately northwest.

Q. When did you take the observation upon which you base that statement?

A. I don't know what she was showing by compass.

Q. You were swinging?

A. We were swinging. I know she was going around on a course on which we were going to steady her.

Q. You know that, as you say, simply from the loom of the lights of the city? A. Yes.

Q. Nothing accurate about that, is there, captain?

A. Very approximate. [114]

Q. As a matter of fact, are you certain that you went around the bow of the "George Washington" instead of going around her stern?

A. Positive I went around her bow.

Q. How close did you pass her on her bow?

A. That would be very approximate.

Q. Your best judgment; you have given other distances here.

A. About two or three ship lengths; two ship lengths probably.

Q. What do you call a ship's length?

A. 400 feet, 450 feet.

Q. You think you passed her from 800 to 1,200 feet, from her bow?

A. We were setting down on her bow all the time,

(Deposition of Oliver Pehr Rankin.)

we were passing, so the distance was not remaining constant.

Q. The distance would be constant the moment you were opposite her bow: How far do you think that was?

A. About two ship's lengths.

Q. About 800 feet? A. Yes.

Q. How long was it after you passed her bow before you saw the "Bayard"?

A. A fraction of a minute.

Q. How far was the "Bayard" off, to your best judgment? A. About three ship lengths.

Q. About 1,200 feet?

A. Not that much; possibly between two and three ship lengths.

Q. You are not sure of the distance? A. No.

Q. It might have been only 800 feet, and it might have been even less?

A. It might have been 800 feet—wait a minute, at what time?

Mr. FRANK.—Read the question to him.

(Question repeated as follows: "How far was the "Bayard" off to your best judgment.")

Q. (Contg.) When you passed the bow of the "George Washington"?

A. Or at the time of sighting the "Bayard"—about two ship lengths.

Q. How far was the "Bayard" off, to your best judgment, from the "George Washington"?

A. About three-eighths of a mile. [115]

Mr. GRIFFITHS.—Q. That is measuring from

(Deposition of Oliver Pehr Rankin.)

the stern of the "George Washington" or from her bow?

A. Have you a pair of dividers here?

(Measuring on the diagram.)

Mr. FRANK.—Q. You are measuring there, you don't assume that those diagrams on the map are correct?

A. To the best of my judgment.

Q. They are not laid down to any scale at all; it is just an eye judgment from the map, is it not?

A. Not the "George Washington's" position.

Q. What have you got to fix the position accurately? You see the trouble is what I am trying to get from you is the actual positions of the vessels here, and you are arguing from the diagram that you have drawn.

Mr. GRIFFITHS.—Q. How do you place these ships?

A. By sextant angles; horizontal sextant angles, from the pier heads.

Mr. FRANK.—Q. When did you do that?

A. The day following the collision.

Q. You have not undertaken on the map here to locate by that measurement?

A. I have here; the "George Washington."

Mr. GRIFFITHS.—You see the intersection of lines.

A. (Contg.) I place the "Washington" right between this intersection of lines.

Mr. GRIFFITHS.—Q. Have you had this drawing before? A. I have.

(Deposition of Oliver Pehr Rankin.)

Q. When did you have it?

A. Immediately following the collision.

Q. Those fine lines that you just referred to, were they made by you? A. They were.

Q. How were they made?

A. As the result of a position obtained from horizontal sextant angles from the pier head.

Mr. FRANK.—Q. After the collision?

A. Yes. [116]

Q. That would not be true with reference to the "Bayard" because she was moving?

A. It would not be true of the "Bayard"; it would not be true for the "Bayard's" position at the time of the collision.

Q. The only thing you are drawing now is that the "George Washington's" location on this map is in accordance with the measurement you made on the map at some previous time?

A. This is the position of the "Bayard" following the collision.

Mr. GRIFFITHS.—Mark that "B-2."

Mr. FRANK.—Q. This position "B-2" of the "Bayard" that you put on this map is only approximate? A. Yes.

Q. You have no data upon which it is based?

A. No, sir..

Q. You say at that time she was about three-eighths of a mile from the "George Washington"?

A. Approximately; that is my judgment.

Q. What time was it you were out at the end of the pier observing locations of vessels out there?

(Deposition of Oliver Pehr Rankin.)

A. About 15 minutes prior to departure.

Q. Of what vessel? A. Of the "Beaver."

Q. Was it foggy at that time?

A. Hazy, with indications of denser haze or light fog on the eastern section of the Bay.

Q. Couldn't you see lights on the eastern section of the Bay? A. No, sir.

Q. You could not? A. Could not, no, sir.

Q. Was it dark when you made that observation?

A. It was dark.

Q. How long had it been dark?

A. About one hour.

Mr. GRIFFITHS.—It was before the Day-light Saving Bill went into effect.

The WITNESS.—(Contg.) That, of course, was a guess again. We could get that very readily from the tables. I imagine it gets dark about a quarter to six at that time of the year.

Mr. FRANK.—Q. Well, you know it had been dark for sometime, anyway? A. It had, yes.

Q. You knew when you swung out from the pier that there was a [117] strong ebb tide, didn't you? A. Yes.

Q. In fact, you knew it before you started?

A. Yes.

Mr. FRANK.—This map can be marked "Exhibit A." It can be considered as in evidence. We will retain it to pass between us.

Mr. GRIFFITHS.—Yes.

Redirect Examination.

Mr. GRIFFITHS.—Q. Captain, why did you

(Deposition of Oliver Pehr Rankin.)

come out with your engines full speed astern?

A. To prevent sagging down on the south corner of Pier 38.

Q. On account of the strong ebb? A. Yes.

Q. So were you under full speed when you got her headed around, going ahead?

A. In order to make our handle.

Q. Will you explain that a little more fully?

A. A ship develops her best rudder power in going full speed ahead.

Q. The "Beaver" is a passenger steamer?

A. Yes.

Q. Did you have passengers on board on this occasion? A. We did.

Q. When you describe the atmosphere as foggy, was it a settled or a patchy fog?

A. Patchy fog, or a passing fog, as I described it before, later on becoming denser.

Q. Could you see the lights on the Oakland side of the Bay? A. No sir,—at what time?

Q. As you were coming down the Bay, after getting around the "Washington"?

A. I didn't notice them; I would have no occasion to look in that direction then.

Recross-examination.

Mr. FRANK.—Q. You would not have time either, would you, this happened so quickly?

A. No.

Q. With that strong ebb tide running, why didn't you give the "George Washington" a berth?

A. I considered the "George Washington"; I

(Deposition of Oliver Pehr Rankin.)

gave her sufficient; I knew there were some [118] barges anchored to the southeast.

Q. You could have given her a much wider berth without coming into the neighborhood of those barges, couldn't you? A. I don't know.

Q. In fact, the barges without having been an obstruction, you could have gone southward and around them too, could you not?

A. By so doing I would have run a chance of losing the lights on the San Francisco side, which are a guide in finding one's way out in hazy weather.

Q. Is that the only reason that you can offer?

A. I also knew that the barge was at work on the cable; I wished to go between the San Francisco side and the barge.

Q. Why didn't you go further out in the bay?

A. As I say, you learn the position of your ship by the lights, the Frisco lights.

Q. You have a compass and know the Bay sufficiently?

A. Not sufficient to indicate—the compass is not sufficient to navigate the Bay in hazy weather with an ebb tide.

Q. Don't ferry-boats do it every day, very many days in the year, and don't vessels do it, go in and out in foggy weather: You have no lights in the day-time; if you travel in foggy weather how do you go out?

A. In the case of ferry-boats and the loaded "Beaver" with an ebb tide, I don't think it is parallel.

(Deposition of Oliver Pehr Rankin.)

Q. How do you go out in the day-time?

A. I wouldn't go out in foggy weather in an ebb tide.

Q. Only at night-time?

A. Not in a dense fog then; not at any time with a fog. [119]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of notice of counsel, on Friday, May 10, 1918, before me, Thomas E. Hayden, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared Oliver Pehr Rankin, a witness called on behalf of the claimant in the cause entitled in the caption hereof; and Nathan F. Frank, Esq., appeared as proctor for the Libelant, and F. P. Griffiths, Esq., appeared as proctor for the claimant, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereunto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by W. H. Barnum, and thereafter reduced to typewriting; and I further certify that by stipulation of the

proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

Accompanying said deposition and referred to and specified therein is Libelant's Exhibit "A."

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named [120] in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 23 day of May, 1918.

THOMAS E. HAYDEN, (Seal)

United States Commissioner, Northern District of California, at San Francisco. [121]

[Title of Court and Cause.]

No. 16303.

Notice of Taking Deposition De Bene Esse
 To Aktieselskapet Bonheur, a corporation, libelant,
 and to Messrs, Nathan H. Frank and Irving H.
 Frank, Its Proctors:

You and each of you will please take notice that
 —Rankin, a witness on behalf of claimant herein,

San Francisco & Portland Steamship Company, a corporation, whose testimony is necessary in the cause above named, and who is bound on a voyage to sea and is about to go out of the United States and out of the district in which the cause is to be tried and to a greater distance than one hundred miles from the place of trial before the time of trial, will be examined *de bene esse* on the part of the said claimant before Thomas Hayden, United States Commissioner, in and for the Northern District of California, not being of counsel or attorney to either party nor interested in the event of the cause, at the offices of Messrs. McCutchen, Olney & Willard, 1107 Merchants Exchange Building, San Francisco, California, on Friday, the 10th day of May, 1918, commencing at the hour of 5:15 o'clock in the afternoon of said day, at which time and place you are hereby [122] notified to be present and propound interrogatories if you shall think fit.

Dated: San Francisco, California, May 10, 1918.

McCUTCHEM, OLNEY & WILLARD,
Proctors for Claimant, San Francisco & Portland
Steamship Company, a Corporation.

[Endorsed]: Receipt of a copy of the within notice of deposition hereby admitted this 10th day of May, 1918 at fifteen minutes to five P. M.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Libelant.

Filed Jan. 21, 1921. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [123]

[Title of Court and Cause.]

No. 16303.

Stipulation for Depositions in New York and Washington, D. C.

IT IS HEREBY STIPULATED by and between the respective parties hereto that depositions of such witnesses as either party may desire to call may be taken as follows:

(1) In New York, before any notary public, at the offices of Messrs. Kirlin, Woolsey & Hickox, 27 William Street, either (a) at such time or times as may be agreed upon between Nathan H. Frank, Esq., proctor for libelant, and Messrs. Kirlin, Woolsey & Hickox, acting for respondent and claimant; or (b) at the same place by two days' written notice of depositions on behalf of libelant served by the said Nathan H. Frank, Esq., upon the said Kirlin, Woolsey & Hickox at their said offices or on behalf of respondent and claimant by two days' written notice served by the said Kirlin, Woolsey & Hickox on Messrs. Haight, [124] Sanford & Smith, who are hereby authorized to receive said notice on behalf of said Nathan H. Frank, Esq., at their offices, 27 William Street, New York City; provided that said deposition shall not be noticed for a date later than the — day of —, 1918.

(2) In Washington, D. C., before any notary public, at the office of Walter S. Penfield, Esq., Colorado Building, either (a) at such time or times as may be agreed upon between Nathan H. Frank,

Esq., proctor for libelant, and the said Waslter S. Penfield, Esq., acting for respondent and claimant; or (b) at the same place by two days' written notice of depositions on behalf of libelant served by the said Nathan H. Frank, Esq., upon the said Walter S. Penfield, Esq., at his said office or on behalf of respondent and claimant by two days' written notice served by the said Walter S. Penfield on Nathan H. Frank, Esq., by leaving the same addressed to him at his, the said Nathan H. Frank's address in Washington, D. C., which the said Nathan H. Frank will notify to the said Walter S. Penfield upon his arrival in Washington, D. C.; provided that said depositions shall not be noticed for a date later than the 3d day of October, 1918.

It is further stipulated and agreed that the testimony given upon said depositions may be taken down in shorthand and reduced to typewriting by any stenographer appointed by the respective notaries public; that upon said depositions being written up they shall be duly certified by the notary public before whom they shall have been respectively taken and by him sent by registered mail addressed to the Clerk of the above-entitled Court; that the depositions may be put in evidence by either party on the trial of the cause; that all [125] objections as to the form of the questions are waived unless objected to at the time of taking the depositions and that all objections as to the materiality and competency of the questions are reserved to all parties; that the reading over of the testimony to

the witnesses and signing thereof are waived.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Libelant.

McCUTCHEM, OLNEY & WILLARD,

Proctors for Respondent and Claimant. [126]

[Title of Court and Cause.]

No. 16303.

Agreement as to Time and Place of Taking Depositions.

Whereas, it is provided in a certain stipulation entered into by and between the proctors for the respective parties in the above-entitled cause that depositions of such witnesses as either party may desire to call may be taken in Washington, D. C., before any notary public, at the office of Walter S. Penfield, Esq., Colorado Building, at such time or times as may be agreed upon between Nathan H. Frank, Esq., proctor for libelant, and the said Walter S. Penfield, Esq., acting for respondent and claimant:

And, whereas, it is desired by said witnesses whose depositions are to be taken that the same should be taken at the War Trade Board, corner 20th & C Streets, N. W., Washington, D. C., instead of at the office of Walter S. Penfield, Esq.:

Now, therefore, it is agreed by and between Nathan H. Frank, Esq., proctor for libelant in said cause, and the said [127] Walter S. Penfield,

Esq., acting for and in behalf of the Respondent and the Claimant, as follows:

That the deposition of Lowell L. Richards will be taken to be used as evidence in the above-entitled cause on the 3d day of October, 1918, at the hour of 10 o'clock A. M. at the office of the Director of the Bureau of Transportation, War Trade Board Building, corner 20th & C Sts., N. W., Washington, D. C.

In witness whereof, said Nathan H. Frank, Esq., and said Walter S. Penfield, Esq., acting for and in behalf of the respective parties in the above-entitled cause, have set their hands this 3d day of October, 1918.

NATHAN H. FRANK,

Proctor for Libelant.

WALTER S. PENFIELD,

Acting for and in Behalf of Respondent
and Claimant. [128]

[Title of Court and Cause.]

No. 16303.

**Deposition of Lowell L. Richards, Witness, Taken
in Behalf of the Respondent and Claimant.**

Deposition of Lowell L. Richards, witness, taken before me, Charles Ray Dean, a Notary Public duly commissioned as such in and for the District of Columbia, United States of America, in an action pending in the Southern Division of the United States District Court for the Northern District of California, First Division, in Admiralty, wherein

the Aktieselskapet Bonheur, a corporation, is libelant, and the American Steamer "Beaver," her tackle, apparel, engines, boilers, furniture, etc., is respondent, and the San Francisco & Portland Steamship Company, a corporation, is claimant, the same being taken in behalf of said respondent and said claimant, on the 3d day of October, 1918, pursuant to a written stipulation for depositions hereto attached, and also pursuant to a written agreement attached hereto, signed by Nathan H. Frank, Esq., proctor for libelant, and by Walter S. Penfield, Esq., acting for the respondent and claimant, and providing [129] for the time and place of taking such deposition.

Said libelant was present by its proctor, Nathan H. Frank, Esq., said respondent and said claimant were each present by Walter S. Penfield, Esq., of Washington, D. C., acting for them and in their behalf.

LOWELL L. RICHARDS, of Washington, D. C., of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

Direct Examination by Mr. PENFIELD, for the
Respondent and Claimant.

Q. State your name.

A. Lowell Lincoln Richards.

Q. Age? A. 47.

Q. Place of residence?

A. Washington at present, New York generally, Litchfield in summer.

Q. What official position, if any, do you hold

(Deposition of Lowell L. Richards.)

with relation to the War Trade Board of the United States?

A. Director of the Bureau of Transportation of the War Trade Board.

Q. Was the Bureau of Transportation organized and in operation on November 3, 1917?

A. Yes.

Q. Were you the Director at that time?

A. Yes.

Q. What are the duties of that Bureau?

A. Granting of licenses for all fuel and all ship's stores and supplies aboard vessels to admit of their leaving ports of the United States or possessions.

Q. Was or was not any control exercised by the Bureau of Transportation over the clearance of vessels leaving United States ports during the period from November 3, 1917 to January 14, 1918?

A. Yes, complete control was exercised over every vessel leaving the ports of the United States or possessions. [130]

Q. By what method was that control exercised?

A. By the granting of a license, as referred to above, for the bunker fuel and ship's stores and supplies.

Q. What if any matter did the Bureau take into consideration in granting licenses?

A. I don't feel at liberty to answer that question.

Q. State whether or not it took into consideration the nature of merchandise?

A. Not as a rule, excepting in special instances.

Q. What do you mean by special instances?

(Deposition of Lowell L. Richards.)

A. There may have been certain reasons, such as destination, flag or vessel, or other reasons, which would cause some Department or other of the Government to wish us to exercise control irrespective of export licenses that may have been granted. For example, at the present time the granting of licenses to sailing vessels sailing from Atlantic ports is strongly restricted and, notwithstanding a merchant having secured export licenses for cargo to some specified destination, we may not be able to allow a sailing vessel to proceed with such cargo.

Q. Was that practice in vogue between November 3, 1917 and January 14, 1918?

A. I cannot answer so general a question; conditions of one kind and another have had to be thought of from time to time.

Q. State whether or not the issuance of licenses is conditioned upon the execution of certain agreements by the owners and by the masters of vessels?

A. At times.

Q. What is the nature of these agreements?

A. Varying,—one that has been particularly in vogue has been the requirement of the owners to guarantee that the vessel would [131] return direct to a port of the United States and with such cargo as approved by the War Trade Board.

Q. State whether or not you took into consideration the destination of the ship in granting licenses?

A. Always.

Q. What form of application was used between November 3, 1917 and January 14, 1918?

(Deposition of Lowell L. Richards.)

A. We had no regular form adopted at that time, but left the applicant the option of putting in his application in any way he saw fit, so long as he gave the name of the vessel, port from which clearance was desired, destination, cargo, and such other particulars as we required from time to time.

Q. State whether or not at that time you were using the forms which had been prepared by the old Exports Administrative Board, both for the applications and for the licenses?

A. As I stated, we left that at the option of the applicant, he could use an export application form,—he could have written a letter, he could have sent a telegram,—he could use any method at all whereby his desires were placed before us.

Q. As Director of the Bureau of Transportation, do you have access to and control of the correspondence and other files of this Bureau?

A. Yes.

Q. What Bureau?

A. Bureau of Transportation.

Q. Will you produce the part of your files relating to the Norwegian motor ship "Bayard" between November 3, 1917 and January 14, 1918?

A. I will.

Q. Mr. Richards, I direct your attention to a telegram from a Mr. McNear of San Francisco to J. Beaver White of the War Trade Board, dated November 24, 1917, and ask if you have such a telegram in your files. A. I have not.

(Deposition of Lowell L. Richards.)

Q. What official position does Mr. Beaver White hold in the War Trade Board? [132]

A. Member of the War Trade Board.

Q. Is he representing any particular bureau of the United States Government on this War Trade Board?

A. Food administration.

Q. What official position, if any, does Mr. Frank C. Munson occupy with the War Trade Board?

A. Mr. Munson recently resigned from the War Trade Board, but prior to that he represented the United States Shipping Board as a member of the War Trade Board.

Q. When did Mr. Munson resign?

A. Within the last month.

Q. What is Mr. Munson's full name?

A. Frank C. Munson,—I do not know his middle name.

Q. Where is Mr. Munson now?

A. I do not know, but a week ago he was at Hot Springs, Virginia.

Q. Mr. Richards, I direct your attention to a telegram of November 24, 1917, from Mr. Munson of the War Trade Board to Mr. McNear of San Francisco, and ask if you have any record of such a telegram in your files?

A. I have a copy of such a telegram, but as the date of November 24, 1917, has been written in by hand in lead pencil, I can only assume that is the correct date.

Q. Is it the rule of the War Trade Board to

(Deposition of Lowell L. Richards.)

preserve copies in its files of all telegrams sent out?

A. Of the Bureau of Transportation, yes, I cannot answer for the other Bureaus of the Board, but I take it for granted.

Q. Is this telegram a part of the files of the Bureau of Transportation? A. Yes.

Mr. PENFIELD.—I now offer in evidence in behalf of respondent and claimant and read in evidence as part of the deposition of the witness the copy of the telegram of November 24th produced by the witness [133] which is in words and figures as follows, to wit:

Copy Telegram Exports Administrative Board.
November 24, 1917.

G. W. McNear,
433 California Street,
San Francisco, Cal.

Answering your telegram referred by Mr. White, see no objections to your fixing the motor ship BRAZIL lumber and general this coast to west coast South America and return cargo nitrate. Cannot approve voyage to New Zealand motor ship "BAYARD" as voyage does not seem necessary at present time. Suggest she goes west coast South America and back with nitrate. Motor ship "Kina" will be approved Philippines and return. If you secure approval Chartering Committee in New York, bunker license will be granted.

(Signed) FRANK C. MUNSON,
War Trade Board.

(Deposition of Lowell L. Richards.)

Q. State what is meant by Exports Administrative Board?

A. The War Trade Board succeeded the Exports Administrative Board and a copy of telegram referred to must have simply been written out on an old Exports Administrative blank.

Q. What is meant by the term "Chartering Committee" used in this telegram?

A. The Chartering Committee is the Committee of the United States Shipping Board sitting in New York, who approve or disapprove of charters and voyages of vessels.

Q. What was the practice of the War Trade Board at that time in regard to granting and refusing bunker license to ships before the charters of the ships for which applications for bunkers were made had been approved by the Chartering Committee?

A. If we knew the Chartering Committee had disapproved of a charter or voyage we would be very largely influenced by such disapproval and only grant bunker license if there was a particular reason developed subsequently why such license should be granted.

Q. State whether or not you would grant or refuse bunker licenses to such ships before the charters had been approved?

A. There were instances where licenses were granted through our [134] being unaware of any action having been taken by the Chartering Committee. It has all been a matter of development

(Deposition of Lowell L. Richards.)

and growth. Our aim from the first has been to co-operate with them and perfect our workings together so that no vessel could leave without first having the charter and voyage approved by the Chartering Committee, unless there were very strong reasons which we would have to take into consideration in some particular instances.

Q. How early did the practice start?

A. From the very formation of the Chartering Committee.

Q. State when that was?

A. I do not remember accurately, but my recollection is some time in September or October.

Q. State whether or not it existed the latter part of October? A. I believe it did.

Q. State whether or not it existed the first of November?

A. I feel very positive that it did, but I wish to have the matter confirmed in some way or other before I state it positively. (Witness telephones).

Q. Can you confirm it now?

A. The Secretary's office of the United States Shipping Board tells me over the telephone that it was September 29, 1917.

Q. Mr. Richards, what do your records show in regard to the granting of bunker licenses to the Norway-Pacific Line in San Francisco for its motor ship "Bayard" between November 3, 1917 and January 14, 1918 inclusive?

A. My records show that on January 14, 1918 a bunker license was granted for fuel oil and

(Deposition of Lowell L. Richards.)

ship's stores to Norway-Pacific motor ship "Bayard" from the United States to Australia and back to San Francisco.

Q. From what port in the United States?

The license was issued at San Francisco and was intended to apply from San Francisco only, although by the literal wording [135] it reads "United States to Sydney and Melbourne."

Q. Was any other bunker license granted to the "Bayard" between those dates?

A. I have no record of the same, and as we kept a careful record of all licenses granted, and have in this particular instance asked our San Francisco office for copies of all papers in connection with this vessel, it is safe to state that no license had been previously granted.

Q. Between those dates?

A. Between those dates.

Q. Was any application for license made by the "Bayard" between November 3, 1917 and January 14, 1918?

A. There unquestionably was not in writing, but there may have been some verbal inquiry made in San Francisco. The records do not disclose any application, even for the license which was granted, which leads me to infer that the application was made verbally for this license which was granted.

Q. Where was it made?

A. Unquestionably San Francisco.

Q. State whether or not your records show that

(Deposition of Lowell L. Richards.)

the application was filed on January 7th for the license which was granted on January 14th.

A. I have no copy of any application and cannot state positively without further communication with the San Francisco office. On August 13th I wrote to our San Francisco office that our files apparently were not complete and for them please, therefore, to send a copy of all the records and forms they had regarding this vessel, and these were sent to us by letter dated August 19, 1918, and do not include a copy of any application whatsoever. It may be, however, that the copy of application was overlooked. I might state that as a general practice applications have customarily been made for [136] bunker license at ports from which vessel wishes to clear, to our local agent, or in case there was no agent, to the Collector of Customs, and the said agent, or the Collector of Customs would then communicate by letter or telegram with us for instructions. In this particular instance there was evidently some misunderstanding on the part of the local agent as to his authority for granting license without reference to us, as our records do not disclose specific instructions sent by me on this particular boat. We authorized local agents and collectors to grant, without specific reference to us, licenses for certain classes of vessels, or license vessels bound on certain voyages. This is why our records in this particular instance do not show as complete information as they should have if there had not been such a misunderstand-

(Deposition of Lowell L. Richards.)

ing at that time on the part of our local agent, as the application for this vessel should have been referred to us before license was granted.

Q. Mr. Richards, referring to the telegram sent by Mr. Munson to Mr. McNear on November 24th, which has been introduced, state whether or not you know if the Mr. White referred to therein is John Beaver White of the War Trade Board?

A. Unquestionably.

Q. Do you know where,—on what files there is the telegram referred to that was sent by Mr. White?

A. I have not the faintest idea. I would have assumed it to have been among the files of Mr. Munson, but as his files are now in charge of this Bureau and we have made careful search through the same for any records regarding this vessel, I cannot give any definite idea what may have become of any records he may have had, but it is possible that anticipating inquiry for information respecting the vessel, the file may have been taken out by him shortly before leaving here, for [137] the purpose of being read over, and in some way mislaid. The only persons that I can think of who might give any light on the subject are Mr. Munson himself, or Mr. K. E. Knowles, who was his Secretary when he was a member of the Board here.

Q. Where is Mr. Knowles now?

A. I do not know positively, but think probably in the office of the Munson Steamship Co., 82 Beaver Street, New York.

(Deposition of Lowell L. Richards.)

Q. Is he any longer connected with the War Trade Board? A. He is not.

Q. When did he resign?

A. Approximately the same time as Mr. Munson.

Cross-examination by Mr. FRANK.

Q. Mr. Richards, I understood you to say, although it is not in this record, that this Bureau of Transportation was organized October 12, 1917?

A. Yes.

Q. At its inception, of course, and during the time of its early transaction of business, it had to feel its way in order to ascertain just exactly how to transact the business?

A. October 12th does not actually represent the time of the inception of the work of the Bureau of Transportation; it simply represents the date of a change in name, the functions of the Bureau of Transportation were operated in the same way for several months previously.

Q. I understood you to say that this matter of the Bureau's operations was a matter of development and growth?

A. It was from the time of the formation of the Exports Administrative Board created by the President following the passage of the Espionage Act approved June 15, 1917.

Q. How long after that was this Board organized?

A. Almost immediately. I should say within 24 hours, as all the steps were previously laid for immediate action. [138]

(Deposition of Lowell L. Richards.)

Q. By November 3d had you fully developed it or were you still improving on your experience?

A. We expect to improve on our experience until the war is ended but we were fully developed for all practical working at that time, excepting as to matters of form.

Q. As I understand you, of course the general policy and purpose of the Board was understood but the method of carrying out that policy was a matter of growth?

A. Well, the matter of policy has been a matter of growth but changes from day to day now just as it did at inception; the complete control of the sailing of all vessels was in actual practice long before that date.

Q. That is, so far as you could control them,—there were some vessels you had difficulty in getting hold of to control at first?

A. Not that I recollect. Instructions were sent to all collectors in the United States and possessions they were not at liberty to clear any vessel until bunker license had been granted by the Exports Administrative Board, and we then developed as rapidly as possible a system of allowing the local agent or collector to clear, without reference to us, as many classes of vessels or vessels bound on particular voyages, as we safely could.

Q. Would you mind stating, so far as it implies to the Pacific Coast, what voyages were included in those exceptions?

A. I should not like to state just what were in-

(Deposition of Lowell L. Richards.)

cluded in the exceptions, but I can state that they were instructed to refer certain classes of vessels to us, which class would have included this particular vessel.

Q. In that, are you referring to Norwegian motor ship? A. I am.

Q. That is, they were to be referred to you before bunker licenses [139] were granted?

A. Yes.

Q. That reference, of course, as I understand, could be done by telegraph and a prompt reply received in the same manner?

A. It has been the practice from the first of nearly all local agents or collectors to place applications before us by wire and excepting in occasional instances where the voyage was at so much later a date that a letter would do, this Bureau has practically an unbroken record for considerably over a year, and in fact since the formation of the Administrative Board, for having sent telegraphic instructions to the local port on the day application has been received, unless there were some special reasons why a reply had to be held up pending, for example, some special instructions from the War Trade Board. There has been no point that has been more worried over and appreciated by the Bureau of Transportation than the seriousness of delays to any vessels whatsoever.

Q. Now you have said something about working or trying to co-operate with the Chartering Board with reference to approval of the charters by the

(Deposition of Lowell L. Richards.)

Chartering Committee,—how about vessels that were put on the berth by the owner for owner's account, was there any necessity for delay in that connection?

A. The scope of the work of the Chartering Committee has been one of growth. Many charters and voyages were not at first supervised by them. We, from the very first, attempted to secure daily advices from them of all approvals and disapprovals, which information was placed at once on our files, so that when an application came to us, if we had any record of any action by the Chartering Committee, such information was seen by us.

Q. I am referring now, Mr. Richards, not to a charter but to a [140] vessel going out for owner's account?

A. As I stated, the scope of the Chartering Committee's work has been one of growth, and at first, as I recollect, they did not follow closely vessels which laid on the berth,—whether or not they were paying very close attention to vessels berthed last November, I do not recollect.

Q. I understood you to say, in answer to Mr. Penfield's question as to what matters the Bureau took into consideration in granting licenses, that you did not feel at liberty to answer,—I assume from that that each case was treated individually?

A. No, there were certain rules that were followed respecting certain classes of vessels and also respecting vessels bound on certain voyages, but in

(Deposition of Lowell L. Richards.)

many instances there was no definite method followed, but the vessel was treated on its particular merits. I simply do not feel that during the war I should attempt to outline all the varying reasons that may have swayed the War Trade Board in their decisions.

Q. Was there any general inhibition at that time against a vessel taking cargo from San Francisco to Manila and touching at two ports at Manila, with return cargo to San Francisco?

A. Around that time more careful supervision was being exercised over voyages with a view to having vessels only go on voyages which were considered particularly essential.

Q. We are concerned with the definite time,—after or before November 3d.

A. Assuming that November 24th was the date of the telegram from Mr. Munson to Mr. G. W. McNear, the message clearly shows by its wording that such efforts were being made at that time.

Q. November 24th? A. Yes.

Q. Previous to that time you have no knowledge on the subject? [141]

A. I should say that at least for two or three months before that time considerable consideration was given as to the particular need of voyages of any vessel.

Q. Wasn't the Manila trade considered important to be taken care of during all of that time?

A. You are now asking me to pass upon what voyages were considered desirable and what were

(Deposition of Lowell L. Richards.)

not,—this Bureau was acting under the instructions of the War Trade Board and I feel that answer to that question should with more propriety be made by the War Trade Board itself?

Q. Are you a director of the War Trade Board?

A. No, I am a director of the Bureau of Transportation, acting under the instructions of the War Trade Board.

Q. Then, as a matter of fact, you don't know whether at that time the voyage would or would not have been approved?

A. I do not recollect. I may have known. I may have been at the time perfectly prepared to have given the necessary instructions without reference to the Board, and again I may not have. The essential fact is that the application did not come before us, as it should have.

Q. The main purpose of the War Trade Board at that time was to secure the return of these vessels to an American port so that they should remain under the control of the War Trade Board.

A. I cannot by any means say that this was the main purpose; it was one of the objects that we were covering.

Q. There was no disposition unnecessarily to interfere with the trade?

A. That I cannot state positively, as there may have been at that time a very definite disposition to cancel a certain amount of tonnage to proceed to certain other trade, for example, nitrate trade,

(Deposition of Lowell L. Richards.)

which has been at all times one of the most essential trades connected with the war.

Q. But as a matter of fact, you did not when the vessel was [142] finally granted her license desire to put her in the nitrate trade?

A. No, but Mr. Munson's telegram supposedly of November 24th to Mr. McNear clearly intimates at that time the thought that nitrate was preferable.

Q. Is there anything else in that record referring to this vessel?

A. Nothing whatsoever prior to January 14th beyond what I have already stated, except a copy of letter from the Master of the "Bayard" dated January 12th guaranteeing the return of the vessel directly to the United States, and also copy of an affidavit of the same date that none of the stores permitted aboard would be transferred at sea to any other vessel, or landed at a foreign port; these papers also included a list of the actual stores.

Q. Previous to that time he, the local agent, was acting on his own initiative in some cases?

A. Yes, as outlined above.

Redirect Examination by Mr. PENFIELD.

Q. State whether or not the Bureau of Transportation is a branch of the War Trade Board?

A. It is.

Q. You stated that the application did not come before the Board as it should have, what application did you refer to?

A. A request that license be granted by the Bureau which would admit of the vessel sailing.

(Deposition of Lowell L. Richards.)

Q. Of what date?

A. Any date. We received no request for authority to grant such a license, as we should have.

Q. Do you refer to the application made for the trip that was refused on November 24th, or to the application that was granted in January?

A. I refer to any application for this vessel up to February [143] 1918. I am referring to the Bureau of Transportation. I cannot state what may have occurred in messages with members of the War Trade Board. [144]

CERTIFICATE.

I, Charles Ray Dean, the above-named Notary Public, do hereby certify that pursuant to the annexed stipulation for taking depositions entered into between the parties in the above-entitled cause, wherein the Aktieselskapet Bonheur, a corporation, is libelant, and the American Steamer "Beaver," her tackle, apparel, engines, boilers, furniture, etc., is respondent, and the San Francisco & Portland Steamship Company, a corporation, is claimant, and also pursuant to the annexed agreement as to time and place of taking the same, the above and foregoing deposition of the witness Lowell L. Richards was given orally before me at the office of the Director of the Bureau of Transportation, War Trade Board, corner 20th & C Steets, N. W., Washington, D. C., on the 3d day of October, 1918, between the hours of 10:00 A. M. and 12 noon; that the libelant was present by its proctor Nathan H. Frank, Esq.; that the respondent and the claim-

ant were each present by Walter S. Penfield, Esq., acting for and in their behalf; that said witness attended before me at said time and place and after being duly sworn by me to testify the truth, the whole truth, and nothing but the truth, testified as is above shown; that his testimony was taken down in shorthand in my presence and under my direction, and reduced to typewriting by O. C. Ham, a competent stenographer appointed by me for that purpose; that after being so reduced to typewriting said deposition was not read over to said witness, nor read by him, nor signed by said witness.

I further certify that I am neither of counsel, nor attorney, nor proctor, for either or any of the parties to said cause nor interested in any manner in said cause; and that [145] pursuant to said stipulation I am this day certifying said deposition, and after being duly sealed by me, I am sending the same by registered mail addressed to the Clerk of the above-entitled court.

Witness my hand and official seal at Washington, District of Columbia, this 4th day of October, 1918.

[Seal]

CHARLES RAY DEAN,
Notary Public.

(U. S. Internal Revenue Stamp—25¢)

Taxable Costs.

Notary Fees.

Certificate and seal.....	.50
Administering oath15
Taking deposition	7.50

Expenses.

Revenue stamp25
First class postage.....	.18
Registered mail stamp.....	.10
Stenographic charges	12.75
	<hr/>
Total.....	21.43

[Endorsed]: Filed Dec. 18, 1918. W. B. Mal-
ing, Clerk. By Lyle S. Morris, Deputy Clerk.
[146]

[Title of Court and Cause.]

No. 16303.

**Stipulation for Depositions in New York and Wash-
ington, D. C.**

IT IS HEREBY STIPULATED by and between the respective parties hereto that depositions of such witnesses as either party may desire to call may be taken as follows:

(1) In New York, before any notary public, at the offices of Messrs. Kirlin, Woolsey & Hickox, 27 William Street, either (a) at such time or times as may be agreed upon between Nathan H. Frank, Esq., proctor for libelant, and Messrs. Kirlin, Woolsey & Hickox, acting for respondent and claimant; or (b) at the same place by two days' written notice of depositions on behalf of libelant served by the said Nathan H. Frank, Esq., upon the said Kirlin, Woolsey & Hickox at their said offices or on behalf of respondent and claimant by two days' written

notice served by the said Kirlin, Woolsey & Hickox on Messrs. Haight, Stanford & Smith, who are hereby authorized to receive said notice on behalf of said Nathan H. Frank, Esq., at their offices, 27 William Street, New York City; provided that said depositions shall not be noticed for a date later than the — day of [147] —, 1918.

(2) In Washington, D. C., before any notary public, at the office of Walter S. Penfield, Esq., Colorado Building, either (a) at such time or times as may be agreed upon between Nathan H. Frank, Esq., proctor for libelant, and the said Walter S. Penfield, Esq., acting for respondent and claimant; or (b) at the same place by two days' written notice of depositions on behalf of libelant served by the said Nathan H. Frank, Esq., upon the said Walter S. Penfield, Esq., at his said office, or on behalf of respondent and claimant by two days' written notice served by the said Walter S. Penfield on Nathan H. Frank, Esq., by leaving the same addressed to him at his, the said Nathan H. Frank's address in Washington, D. C., which the said Nathan H. Frank will notify to the said Walter S. Penfield upon his arrival in Washington, D. C.; provided that said depositions shall not be noticed for a date later than the — day of —, 1918.

It is further stipulated and agreed that the testimony given upon said depositions may be taken down in shorthand and reduced to typewriting by any stenographer appointed by the respective notaries public; that upon said depositions being written up they shall be duly certified by the notary

public before whom they shall have been respectively taken and by him sent by registered mail addressed to the Clerk of the above-entitled Court; that the depositions may be put in evidence by either party on the trial of the cause; that all objections as to the form of the questions are waived unless objected to at the time of taking the depositions and that all objections as to the materiality and competency of the questions are reserved to all parties; that the reading over of the testimony to the witnesses and signing [148] thereof are waived.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Libelant.

McCUTCHEON, OLNEY & WILLARD,
Proctors for Respondent and Claimant. [149]

[Title of Court and Cause.]

No. 16303.

(Deposition of J. B. Smull for Claimant.)

Deposition of J. B. Smull, taken on behalf of claimant at the office of Messrs. Kirlin, Woolsey & Hickox, 27 William Street, New York City, September 30, 1918, by agreement, before C. May Hudson, notary public, in pursuance of the attached stipulation.

Appearances:

J. PARKER KIRLIN, Esq., Representing Messrs.
McCUTCHEON, OLNEY & WILLARD,
Proctors for claimant;

(Deposition of J. B. Smull.)

NATHAN H. FRANK, Esq., Proctor for Libelant.

It is stipulated that all objections may be reserved for the trial.

It is agreed between counsel that reading over, signing and certification of this deposition is waived.

J. B. SMULL being duly sworn and examined as a witness for claimant testifies as follows:

(By Mr. KIRLIN.)

Q. Will you state your residence?

A. I reside at 11 E. 68th Street, New York City.

Q. What is your business training?

A. I started in the steamship business in the fall of 1894, as a ship and freight [150] broker, and I have been in that trade ever since. The first 15 years was as freight broker in business for myself, and since then as a partner in J. H. Winchester & Company, steamship brokers and agents at 358 Produce Exchange, New York City.

Q. You are a member of the Chartering Committee of the Shipping Board, are you?

A. I am.

Q. When was that Committee appointed?

A. You see I received my appointment on October 1, 1917, the appointment being made by the United States Shipping Board.

Q. Who were the other members of the Committee?

A. The other members of the Committee were Welding Ring and Daniel Bacon. Daniel Bacon was succeeded by Mr. A. C. Fetterolf, general

(Deposition of J. B. Smull.)

freight manager of the International Mercantile Marine; he has been serving on the Committee since about the end of November, I am not sure.

Q. Mr. Bacon resigned to join the navy, didn't he?

A. He was appointed a member of our Committee, being in the navy at that time as lieutenant commander, and the navy demanding his entire services he had to resign from the Chartering Committee.

Q. Mr. Fetterolf took his place?

A. Mr. Fetterolf succeeded him.

Q. Won't you state how the work of the Committee was divided up between the members?

A. We realized at the formation of the Committee that the work was going to be of considerable size. Mr. Welding Ring had been in the export commission business and chartering sailing vessels for about 50 years, consequently he took over most of the sailing vessel business, especially the trading on the Pacific Coast; Mr. Fetterolf being a line man was more familiar with line rates of freight and the situation here on the eastern coast, he has taken over the sailing vessels on this coast; I took over the business of the steamers and steamer chartering, as I had been brought up as a steamship broker, and had had 24 years' experience in this line. [151] I was the one best fitted on the Committee to handle the questions that would arise concerning the chartering of steamers in all trades all over the world.

(Deposition of J. B. Smull.)

Q. As a practical matter then were the steamship charters handled by you, the approval?

A. Yes, the approval of all charters for the steamers come before the Committee as a whole, and the approval of a charter is not granted unless two of the Committee of three agree that such charter should be granted, but the details of working out the conditions of chartering steamers is left with me, the sailing vessels left to Ring, the eastern sailing vessels to Fetterolf.

Q. While Commander Bacon was there what branch of the business did he look after?

A. Well, up to the time Bacon left we were endeavoring to handle the whole thing as a Committee, but the work was growing so large by the time Fetterolf got there we had it divided up.

Q. From whom did you receive your instructions as to your general duties?

A. We received our instructions directly from Mr. Hurley, Chairman of the United States Shipping Board.

Q. In writing or word of mouth?

A. Word of mouth first and then by letter.

Q. In a general way what were the instructions?

A. We were to have supervision of all charter parties carrying goods to and from this country in vessels under all flags, the charter parties were not to be approved until all the conditions of the charter-party met with the approval of the chartering committee. In addition to this we were to have the approvals of all voyages where no charter-party

(Deposition of J. B. Smull.)

existed. For instance a man would load his vessel and before that vessel could sail he would have to have the approval of the chartering committee for that voyage. This gave us direct control over all the shipments from this country to foreign countries. [152]

Q. In connection with the approval of charters was the approval of voyages a part of your function?

A. Yes. Subsequently the United States Shipping board decided that no vessel of neutral flag could be chartered to any one but the United States Shipping Board, we were the Agency through whom the United States Shipping Board chartered all their steamers, and to-day there are very few steamers of neutral flag under charter to any American individual, company or corporation.

Q. Were you working in connection with the War Trade Board from the beginning?

A. From the first day that we took charge we were working with the War Trade Board in the matter of their granting all the licenses for bunkers and stores on steamers and sailing vessels.

Q. What was the practice between your Board and the War Trade Board as to the issuance of bunker licenses?

A. From the start until today it has been the rule of the War Trade Board not to grant a bunker license to a sailing vessel or a steamer or motor ship to a foreign port unless their records show that the

(Deposition of J. B. Smull.)

charter party or the voyage has been approved by the chartering committee.

Q. In the end of October or early in November was there any existing practice of the chartering committee with regard to the approval or nonapproval of lump sum charters from the West Coast of this country to the Far East on neutral ships, including Norwegian?

A. We endeavored from the start to get all neutral boats on time charter to reputable American houses for round trips Pacific and round trips in the Atlantic; that is, where the boat was in this country and was to load to a foreign port and return from that foreign port to this country.

Q. In relation to that practice what was the practice of the Committee with regard to the request for approval of lump sum charters on neutral tonnage, auxiliary motor schooners or steamers from the West Coast to the Philippines or China, Japan [153] and Australia?

A. When you say lump sum charters, I presume you mean lump sum charters on gross form charter, where the charterer pays so much for the freight room and the owner pays all other expenses including the loading and discharging of cargoes?

A. Yes.

Mr. FRANK.—That is what is in your mind gross form charter.

A. We did not favor the gross form of charter.

(Deposition of J. B. Smull.)

Q. Perhaps you will explain your reasons why you were trying to get the boats on time charters instead of gross form or lump sum charters?

A. If steamers were approved for time charter it gave the Shipping Board direct control over what that boat should take in the way of rate and the cargoes she carried, and the commodities that she should carry. We were at that time very short of certain commodities that were needed for war purposes, and in regulating the time chartered rate to a lower basis than prevailing on the Pacific we could then go to the time charterer and say he would have to take certain commodities at a certain rate, allowing enough leeway between the charter and the freight both to and from the foreign country so the rates would be considerably lower than they were, so that gave us the power to regulate the port he should go to under the time charter; he would go to just the port we knew there was a cargo to take that in the interest of this country.

Q. It has been testified to in this case that a firm of merchants in San Francisco made an offer to the agents of the ship in San Francisco of \$400,000 for the round trip from San Francisco to two ports in the Philippines and return to San Francisco, and that this offer was under consideration at the time of the collision, out of which this controversy arises, which occurred on November 3; was the practice of the controlling committee at that time such that in any reasonable trade this offer would have been approved if accepted by the owner?

(Deposition of J. B. Smull.)

A. I don't think it would, but I want to qualify that by the statement that we have never said as a Committee what we [154] would do until the charter was put before us.

Q. But in accordance with the practice that had been in vogue up to that time would this in normal course of procedure have been likely to have met with the approval of the committee?

A. No, our records show no approval to any Norwegian boat at that time.

Q. It has been testified that approval was secured for at least two steamers, I believe of Danish registry, perhaps a third, the "Kina," "Peru" and the "Arabian," for return voyages from points in the Far East to San Francisco, what do you say as to that do you recall those cases?

A. Yes, I do because of the fact that they are all owned by the East Asiatic Company. This company refused to charter those boats from the East to the United States on a time charter basis. In order to get the boats to a United States Pacific port we had to agree to allow the boats to come to the eastward on a gross form charter, we realizing that when the vessels once got to an American port we could control their movements through the War Trade bunker licenses. It did not seem to be possible to get the East Asiatic steamers on the Pacific Coast on any other basis. They refused time charter and we had to get them to a Pacific Coast port to control them; they were out trading in the East

(Deposition of J. B. Smull.)

and we had no method by which we could detain them.

Q. Was the reason of the policy the desire to get control of neutral tonnage so that it could be required to return to United States ports?

A. In order to get them on time chartered basis, and having the control of the boat in a United States port we could force them to take the time charter terms.

Q. Force them to return here?

A. And when the time charter is made it is made for a round trip, out and home again.

Q. So that the continuation of the neutral tonnage in our trade was part of that policy?

A. Yes. [155]

Q. Did you as a matter of fact have an application to approve a lump sum charter on the "Bayard" from the American Asiatic Company of San Francisco?

A. Not that I remember.

Q. Did you have an application to approve a lump sum charter on the "Bayard" by the firm of George W. McNear, Inc.?

A. Lump sum on a time charter basis?

Q. Lump sum first?

A. Gross form—yes, I believe there was.

Q. Give us the date of that, will you please?

A. What do you want, the date of the wire?

Q. Yes? A. December 5.

Q. Will you read the telegram into the record?

Claimant's Exhibit "A."

"1917 Dec. 5 Am 12 17.

San Francisco Calif. 4

Chartering Committee United States Shipping
Board

New York City NY

Your telegram first instant relative chartering Arabien have offered hundred seventy thousand dollars lump sum this steamer one way Seattle to Japan ports January sailing also have bid two hundred seventy thousand dollars motorship Bayard one Pacific round San Francisco to Japan and return San Francisco or Atlantic Coast must have two steamers to clear our congestion freight this port and we were advised that owners these steamers will not charter on Government form time basis but will place same on berth themselves for other ports if you can't approve our bids can you not help us arrive at some agreement with the owners in order that we will not lose the steamers and further congest this port.

AMERICAN ASIATIC CO., INC."

Mr. FRANK.—Of course you understood that that is not binding on us, it has no relation to us, it is immaterial in this controversy what somebody else did.

Mr. KIRLIN.—I suggest it is material as showing the practice of the Chartering Committee with regard to nonapproval [156] of lump sum charters at that time.

(Deposition of J. B. Smull.)

The telegram is offered in evidence.

It is marked Claimant's Exhibit "A."

There is no objection on the ground that it is a copy.

Q. What reply was made to that?

Witness produces reply which is offered in evidence.

It is marked Claimant's Exhibit "B" and reads as follows:

Claimant's Exhibit "B."

"December 5, 1917.

Collect

Day Letter

American Asiatic Company,
San Francisco, Cal.

Replying your telegram Arabien committee cannot approve proposed sum hundred seventy thousand dollars but will approve hundred thirty thousand dollars Seattle to Japan ports one Japanese steamer fixed yesterday this basis telegram total deadweight carrying capacity motorship Bayard.

WR/O CHARTERING COMMITTEE.

Mr. FRANK.—I make the same objection to all the following telegrams.

Q. Did you receive a reply giving the deadweight capacity of the motorship? A. We did.

Q. That is this telegram (handing witness paper)? A. Yes.

The telegram produced is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "C" and reads as follows:

Claimant's Exhibit "C."

"San Francisco, Cal. Dec. 5-17.

Chartering Committee US Shipping Board

New York.

Your date motorship Bayard total deadweight fifty three hundred cargo bale capacity three hundred three thousand four nineteen cubic feet.

416A AMERICAN ASIATIC CO. [157]

Q. Was there any reply to McNear?

A. Yes, as per copy herewith.

Witness produces telegram which is offered in evidence.

It is marked Claimant's Exhibit "D" and reads as follows:

Claimant's Exhibit "D."

"December, 6, 1917.

Collect

American Asiatic Company,

San Francisco, Cal.

Sorry cannot authorize fixing motor schooner Bayard at present.

JBS/O CHARTERING COMMITTEE"

Mr. FRANK.—None of these are McNear telegrams.

The WITNESS.—No, they started work on the date first produced.

Q. What is the next communication?

(Deposition of J. B. Smull.)

A. Then McNear started in.

Witness produces telegram.

Q. You received the telegram from Mr. McNear dated December 7 relating to both the Brazil and Bayard? A. Yes.

Q. And that is this telegram? A. Yes.

The telegram is offered in evidence.

It is marked Claimant's Exhibit "E" and reads as follows:

Claimant's Exhibit "E."

"1917 Dec. 7, AM 2:58.

San Francisco, Calif. Dec. 6.

US Shipping Board Chartering Committee,
New York City.

Referring to your message date we are offering for Norwegian motor vessels Brazil and Bayard forty-five shillings per ton on time charter delivery and redelivery this coast for one round transpacific either New Zealand and Australia or Orient stop the Bayard is fifty-two hundred tons deadweight and Brazil forty-four hundred tons deadweight both vessels are now here and ready for cargo which is accumulated by railways and other shippers who are anxiously [158] desiring to ship so as to relieve the great freight congestion at this port stop kindly wire us our immediate approval or if not approved what you will approve.

G. W. McNEAR, *Inc.*"

(Deposition of J. B. Smull.)

Q. What is this lead pencil memorandum?

(By Mr. FRANK)

A. I don't know (looking at telegram), "Subject Board Washington have priority over other home-ward business," I couldn't tell you what it is.

(By Mr. KIRLIN:)

Q. What is the next thing?

A. That is the reply.

Witness produces telegram dated December 7 which is offered in evidence.

It is marked Claimant's Exhibit "F" and reads as follows:

Claimant's Exhibit "F."

"December 7, 1917.

Collect

G. W. McNear, Inc.,

San Francisco, Cal.

Would approve Brazil Bayard as per your telegram but Shipping Board Washington must have priority on homeward business.

JBS/O CHARTERING COMMITTEE."

Q. Let us have the next communication?

Witness produces telegram of December 15 signed G. Loken.

Q. Who is he?

A. I evidently put a memorandum there, Manager for G. W. McNear, I put the memorandum on there at the time I presume, I have known Mr.

(Deposition of J. B. Smull.)

Loken for a good while and I wanted the boys outside to know who he was.

The telegram is offered in evidence.

It is marked Claimant's Exhibit "G" and reads as follows:

Claimant's Exhibit "G."

"1917 Dec. 15, AM. 4:43.

San Francisco, Calif. 14.

US Shipping Board Chartering Committee,
Customs House, New York, NY.

Referring to your message of sixth and seventh instance [159] and our message sixth instance in particular to vessel Bayard Textile Alliance have twelve thousand bales wool to ship from New Zealand to San Francisco which is urgent for war purposes and we have made tentative arrangements with Textile Alliance local office here who have telegraphed their New York headquarters to get your approval of taking this wool and furthermore Textile Alliance have cabled London to have Interallied Chartering Committee London approval likewise stop Kindly telegraph us immediately your approval on this instead of vessel returning via New Caledonia.

G. LOKEN,

Manager for G. W. McNear."

Q. Any reply to that? A. Yes.

Witness produces reply which is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "H" and reads as follows:

Claimant's Exhibit "H."

"December 15, 1917.

Collect

Day Letter

G. W. McNear,

San Francisco, Cal.

Referring your message fifteenth vessel Bayard Committee will approve proposed business cargo wool from New Zealand to San Francisco advise full particulars in regard to same.

WR/O

WELDING RING,

Chairman Chartering Committee."

Q. You received a further communication dated the 15th from McNear? A. Yes.

The telegram referred to is offered in evidence.

It is marked Claimant's Exhibit "I" and reads as follows:

Claimant's Exhibit "I."

"San Francisco, Calif., 235 PM Dec. 15, 1917.

[160]

Welding Ring,

Chairman Chartering Committee,

U S Custom House, New York, N. Y.

Your message fifteenth inst. regarding vessel Bayard we have accepted wool business tentatively from the Textile Alliance New York with whom please communicate and have Textile Alliance or yourselves arrange with Interallied Chartering

(Deposition of J. B. Smull.)

Committee London by cable for approval of business.

G. W. McNEAR, INC.,

G. LOKEN, Mgr.

5 43 PM

Q. Did you reply to that? A. Yes.

Witness produces telegraph dated December 18.

Q. This is another telegram from McNear, is there any reply as far as your files show to the preceding?

A. No, I don't think that called for a reply, he said what he was doing.

Q. The next is a telegram from McNear dated December 18? A. Yes.

The telegram referred to is offered in evidence.

It is marked Claimant's Exhibit "J" and reads as follows:

Claimant's Exhibit "J."

San Francisco, Calif., Dec. 18, 1918.

Chartering Committee,

U S Shipping Board,

Custom House, New York.

London agents of Fred Olsen and Co. cable agents here in reference to motor ships Brazil and Bayard quote subject obtaining approval of Shipping Board and homeward cargoes these vessels we have fixed full cargoes bagged wheat and or flour from Australian port Galveston St. John New Brunswick range unquote we fully appreciate their desire to control the return cargoes by these vessels at the

(Deposition of J. B. Smull.)

same time I feel that the Shipping Board should exercise this control [161] designating cargo that seems most urgent for our own Government requirements. Textile Alliance have advised us that there are quantities of wool in New Zealand which is urgently required here for war purposes and in my wire to Mr. Carry I suggested that he should insist that the Bayard make voyage from here to New Zealand and Australia bringing back this wool for Textile Alliance and as a compromise I proposed that they have the Brazil take back a cargo of wheat and flour from an Australian port but I think the Food Administration would prefer to have this wheat delivered to an American Atlantic port. Up to present time have no reply from Mr. Carry. The vessels are idle here and I am anxious to see them moving. If there is anything you can do to help the situation out will appreciate it very much please wire as soon as possible.

G. W. McNEAR."

(Pencil notation.)

"We have asked for British approval of these steamers to make Pacific round rider Pacific have been waiting their reply for last few days."

Q. What was the next communication?

Witness produces telegram dated December 21, 1917 from McNear, which is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "K" and reads as follows:

Claimant's Exhibit "K."

"San Fran., Dec. 21, '17.

Chartering Committee,

U. S. Shipping Board, Custom House, N. Y.

Regarding motorships Bayard Brazil unless you bring strong pressure to bear on Interallied fear they won't let go in any event there will be further delay in view of all the circumstances please authorize us [162] to send following cable to owners quote Bayard Shipping Board have approved berthing vessel New Zealand and Australia but maintaining privilege indicating priority return cargo destination American Pacific or Atlantic port undertaking to arrange accordingly with Interallied Committee unquote please wire at once if we may send this cable and proceed booking cargo outwards which you will understand takes time to get forward.

326P

G. W. McNEAR."

Mr. FRANK.—This is only relating to the business, not the vessel.

Mr. KIRLIN.—It all shows how the Committee was acting at this time.

Q. Your reply to that was December 21?

A. Yes.

The telegram is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "L" and reads as follows:

Claimant's Exhibit "L."

"December 21, 1917.

Collect

Day letter

"G. W. McNear, Inc.,

San Francisco, Cal.

Bayard Brazil Washington authorizes us to wire you to go ahead on these vessels as per your telegram but Carry asked us to remind you that his understanding on the outward business cargo to be booked subject his confirmation in other words cargo space will be divided among the several interests at your loading port and not given to any one party if you get confirmation from owners we will endeavor to get Interallied to agree to the voyages of both vessels stop on homeward voyages we must have priority as [163] per your telegram would not advise booking cargo until you get confirmation from owners and Interallied sanction.

JBS/O CHARTERING COMMITTEE."

Q. Did you telegraph him further on the same date? A. We did.

Witness produces telegram which is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "M," and reads as follows:

Claimant's Exhibit "M."

"December 21, 1917.

Collect Day letter
G. W. McNear, Inc.,
San Francisco, Cal.

Bayard Brazil still waiting hear from Interallied Committee London for their approval return Pacific Coast as we would prefer this trade both steamers.

JBS/O CHARTERING COMMITTEE."

Q. You received a reply from McNear on the 22d? A. Yes.

The telegram is produced and offered in evidence.

It is marked Claimant's Exhibit "N" and reads as follows:

Claimant's Exhibit "N."

"San Francisco, Dec. 22, 1917.

Chartering Committee,
U. S. Shipping Board, Custom-house,
New York, N. Y.

Bayard Brazil referring your wire twenty-first stop first please assure Carry that all regular shippers to New Zealand and Australia will be given equal opportunity and equal rates on outward cargo have cabled owners quote Bayard Brazil Shipping Board approves New Zealand Australia but retaining right to indicate priority return cargoes

(Deposition of J. B. Smull.)

and destination undertaking endeavor secure Interallied sanction accordingly [164] unquote we already have owners authority for these voyages and Interallied sanction providing owners accept wheat and flour to East Coast stop if Shipping Board wants wool or some other cargo we ask that you communicate Interallied and get their sanction stop must you cable London or can it be arranged New York we are losing valuable time and will much appreciate your further efforts to bring matters to a conclusion please telegraph what you do.

4:15 P. M.

G. W. McNEAR."

Q. Did you receive this further message dated the 24th from McNear? A. I did.

The telegram is offered in evidence.

It is marked Claimant's Exhibit "O" and reads as follows:

Claimant's Exhibit "O."

"San Francisco, Calif., Dec. 24-17.

Chartering Committee,

U. S. Shipping Board, Custom-house,
New York, N. Y.

Fred Dessen London agent of owners Bayard and Brazil cable today quote Bayard Brazil charters signed awaiting your approval unquote this refers to charters Dessen had arranged with English wheat executive for full return cargoes wheat and flour from Australia to East Coast Galveston St. John, Brunswick range stop Carry telegraphs today quote have asked Chartering Committee to en-

(Deposition of J. B. Smull.)

deavor to arrange charters Brazil and Bayard per your request but with the understanding you and I agreed to here that Shipping Board shall designate cargo in and out and that space will be divided among various shippers no one concern given advantage unquote it is regrettable that there is apparently so little co-operation between Interallied Committee and Shipping Board and most [165] unfortunate that these vessels are not working aside from question of loss owners are suffering stop hope you can and will expedite matters.

G. W. McNEAR."

Q. Did you reply according to this message of the 24th? A. Yes.

The telegram is offered in evidence.

It is marked Claimant's Exhibit "P" and reads as follows:

Claimant's Exhibit "P."

"December 24, 1917.

Collect

Day letter

G. W. McNear,

San Francisco, Cal.

Bayard Brazil British approval comes from London so far no word received doing everything possible to hurry.

CHARTERING COMMITTEE."

Q. Is that the end of the communications?

A. It is the same sort of telegram, all the getting of the Interallied executives' approval in London.

(Deposition of J. B. Smull.)

Q. Explain that, I see there is reference to this Interallied, what does that mean?

A. In accordance with the agreement between England and Denmark as well as other neutral countries they cannot charter their vessels without the approval of the Interallied in London. Danish-American boats after approval by our chartering committee, the owners also have to get the approval of the Interallied Chartering Committee in London before the owner can perform the voyage.

Q. Does that apply to Norway as well?

A. Yes, that regulation was enforced for many months before we went into the war; it was their control over vessels.

Mr. FRANK.—Objected to as hearsay.

Q. You had experience in that in your actual operations?

A. Every day, every Norwegian boat and every Danish boat had to [166] get the approval of the Interallied executives as well as ours.

Mr. FRANK.—Same objection.

Q. Is there anything more? A. That is all.

Q. The rest of it is about the Allied approval?

A. Yes. I first want to say I have a few other telegrams along this same line of getting Interallied approval which was finally granted, just the same sort of telegrams.

Q. Were you during part of this same interval covered by these telegrams that have been put in evidence in communication with prospective charterers of the motor vessel "Brazil"?

(Deposition of J. B. Smull.)

A. Yes, the negotiations on both boats were pretty much along the same line, as you will note from the telegrams I have submitted; they were hooked up together, practically, by McNear, McNear was trading on both boats at the same time.

Q. Will you produce what communications you had regarding the "Brazil"?

Mr. FRANK.—This is all subject to the same objection.

A. I have a little more on the "Brazil," that might have some bearing on it, one man's interest or the other.

Q. Let us have what you have. When did that begin?

A. This began on November 27, a telegram sent by W. R. Grace & Company on November 27 to the Chartering Committee at New York.

Witness produces telegram which is offered in evidence.

It is marked Claimant's Exhibit "Q" and reads as follows:

Claimant's Exhibit "Q."

"San Francisco, Calif. 26.

1917 Nov. 27 AM 2:40.

Chartering Committee,

U. S. Shipping Board, Custom-house,
New York, N. Y.

Have cable advising foundering our chartered Norwegian steamer Thor enroute to Orient and essential we should replace this vessel to take care

(Deposition of J. B. Smull.)

of homeward cargo urgently needed here stop Norwegian motorship [167] Brazil now ready here is offering for six months charter at sixty shillings Government form we understand your Board will not approve charters trans-Pacific at once forty-five shillings kindly advise us on this point and also advise us if it will be in order for us to charter Brazil for six months at forty-five shillings.

W. R. GRACE & CO.”

Q. Was there any reply to that?

A. No, I haven't the reply, it is headed for the Transvaal, then we got McNear.

Q. Nothing came of the Grace negotiation?

A. No.

Q. Then did McNear come into it, if so when?

A. First I got from McNear, those wires all work out together.

Witness produced telegram dated December 15 which is offered in evidence.

It is marked Claimant's Exhibit "R" and reads as follows:

Claimant's Exhibit "R."

“San Francisco, Calif., 10 57A 15
Dec. 15, 1917, PM 5:45.

US Shipping Board Chartering Committee,
Customs-house, New York, N. Y.

Referring your messages sixth and seventh inst. and our message sixth inst. in particular to vessel Brazil we have communication from London stating that British authorities disapprove charter as ar-

(Deposition of J. B. Smull.)

ranged and approved by you furthermore advices state that London was communicating with Shipping Board regarding this therefore kindly have this charter for Brazil from this coast to Orient and return here taken up by Shipping Board with Interallied Chartering Committee London by cable and get London approval meantime vessel has been lying for sometime notwithstanding freight movements in this port are greatly congested owing to lack of tonnage.

G. W. McNEAR, Inc.,

G. LOKEN, Mgr." [168]

A. (Continued.) This file is just a repetition, they are all hitched up, it is the same wires.

Q. On a different boat?

A. It shows it in the other wires.

Q. The "Brazil" is referred to there?

A. Yes, these are only copies of the original wires you have already got.

Q. I don't care for any duplicates, but any new wires let us have?

A. It shows all through those telegrams he was working on the two boats in conjunction, hooked them both up together. There is another wire from Grace showing how bad off he is for tonnage, what he has done.

Witness produces telegram dated December 6.

Q. This pertains to the other one? A. Yes.

The telegram is offered in evidence.

(Deposition of J. B. Smull.)

It is marked Claimant's Exhibit "S" and reads as follows:

Claimant's Exhibit "S."

"San Francisco, Dec. 6, 1917.

Chartering Committee,

US Shipping Board, New York.

Since our charter of transvaal which you authorized Nov. 28th we have been looking for other tonnage to submit for your approval but the only suitable vessel we have found is Norwegian motorship Brazil and on offering this vessel forty-five shillings accordance your telegram November 27th owners replied they preferred waiting before chartering at this rate stop our steamer Cacique now enroute San Francisco with coal cargo for Navy Department should be ready here December 20th and if this steamer could be spared for sixty days before proceeding to Chile for nitrate cargo it would be an exceptional opportunity to send Cacique on trans-Pacific voyage as this vessel is particularly adapted for that trade account large size great steaming radius and facility to carry her own fuel [169] for the round voyage account burning oil please advise us.

W. R. GRACE & COMPANY.

428 A. M."

Witness produces telegram dated December 27 which is offered in evidence.

It is marked Claimant's Exhibit "T" and reads as follows:

Claimant's Exhibit "T."

"San Francisco, Dec. 27, '17.

Chartering Committee,

U. S. Shipping Board, Custom-house,
New York.

Bayard Brazil replying your wire twenty-first sorry if there has been any misunderstanding stop agents of owners cabled firm offer our account forty-five shillings tims charter terms delivery here redelivery here in meantime agents here received cable from London agents of owners advising acceptance full cargoes wheat and flour for these vessels from Australia to East Atlantic Coast subject approvals Shipping Board and further instructing them to berth vessels for New Zealand and Australia stop we tried to make this position clear to you in our telegram twenty-first which please re-read in conjunction with your reply same date stop considering that you disapprove berthing vessels we should advise agents to cable owners renewing our offer time charter terms telling them Shipping Board disapprove berthing owners account please confirm at once stop regarding wool account Textile Alliance we felt we already had your approval see your letter December fifteenth but in view of Interallied insistence that vessels being up wheat and flour we suggested that you

get their sanction for [170] the wool which we understand urgently needed for war purposes.

345P. G. W. McNEAR.”

Witness produces agreement with the Interallied which is offered in evidence, telegram from McNear dated January 4.

It is offered in evidence.

It is marked Claimant's Exhibit "U" and reads as follows:

Claimant's Exhibit "U."

“San Francisco, Jan. 4.

Welding Ring, U. S. Shipping Board,

Custom-house, New York.

Norway Pacific Line Company have cable from London agents of owners quote Interallied agreed Bayard Brazil proceed New Zealand Australia return wool Pacific Coast understand Interallied cabled States authorities that both wheat charters cancelled unquote we are glad that your efforts have been successful we have chartered vessels from owners on time charter terms as authorized by you and are now booking cargo outward stop please have Mr. Carry say if he has any preference as to designating outward cargo stop we are concluding arrangements with Textile Alliance for twelve thousand bales wool and such further quantities as they may be able to supply back to San Francisco confirm.

G. W. McNEAR, Inc.”

(Deposition of J. B. Smull.)

Q. Any reply to that?

Witness produces telegram dated January 7 which is offered in evidence.

It is marked Claimant's Exhibit "V" and reads as follows:

Claimant's Exhibit "V."

"January 7, 1918.

Chg. U. S. Shipping Board,
Chartering Committee,
G. W. McNear, Inc.
San Francisco, Cal.

Bayard Brazil Carry says for us to wire you to take [171] your approvals from Cook Shipping Board yours

JBS/O CHARTERING COMMITTEE."

Q. The "Brazil" was eventually closed on a time charter basis also, was she? A. Both, yes.

Q. Did you say you had examined your records before you came to see whether you had approved any lump sum charters the end of October or early November?

A. Yes, I went through our list of approvals up to about the first of the year, and from the time I went in there are no approvals of steamers under foreign flag round trip charters.

Q. Lump sum?

A. Lump sum gross form. The only approval was several of these boats in the East we had to get this way and we allowed a lump gross charter to get them here.

(Deposition of J. B. Smull.)

Q. After you got the "Kina," "Peru" and "Arabian" here did you approve any lump sum charters on them?

A. No, they are all chartered to the United States Shipping Board now.

Q. All on time charters? A. Yes.

Q. These telegrams speak of approvals at 45 shillings per deadweight ton per month, time charter, was that your complement at that time?

A. Yes, sir, maximum rate. After we established the rate of 45 shillings there were no boats fixed over that rate; today the rate is 35 shillings, a gradual reduction from 60 shillings.

Cross-examination by Mr. FRANK.

Q. I understand you were inducted into office here about October 1? A. Yes, sir.

Q. These other gentlemen did not take their positions at the same time you did?

A. No, Mr. Ring on September 15.

Q. The same year? A. Yes.

Q. And the other gentleman subsequent to you?

A. Yes.

Q. How long subsequent?

A. Bacon, about 2 days.

Q. Of course, when you first came together it was necessary for [172] you to organize and to work out some theory, wasn't it? A. Yes.

Q. It took you some time to do that before you settled down? A. No, sir.

Q. It did not? A. No, sir.

(Deposition of J. B. Smull.)

Q. Had you worked out all your plans before November?

A. The plans that we laid out were the scrutinizing of all charter-parties, the rates and conditions of charter, and then followed in a few days the establishment of maximum rates. That was the first thing we did, that we took up immediately and established maximum rates on time charters, and maximum rates on coal, and maximum rates on nitrates, etc.

Q. I understand, but you had to feel your way to a certain extent to find out what the business was, where it was going, who was carrying, where the ships were, and things of that sort, didn't you?

A. Oh, yes.

Q. It took you some time to get that into shape?

A. Not as long as you would think, for the reason that that was my business before I went into it; that is the nature of my business as a ship broker.

Q. But the business had changed by reason of the war, hadn't it?

A. Yes, it had changed, but the basic principles were the same until the Board said that no boat could be chartered to an individual, which was along in March.

Q. That is March of this year?

A. 1918, yes.

Q. And your proceedings then were progressive during that time, up to that point?

(Deposition of J. B. Smull.)

A. Yes, sir.

Q. When any individual charter was presented to the Board, say up to November 3 or along into November, was the individual charter scrutinized and individual judgment given upon it?

A. Yes, sir.

Q. There was no fixed rule applying to all charters that came in, was there? A. Yes, sir. [173]

Q. In what respect? The charters as they came in were all placed before the secretary of the Board, who tried to ease our labors as much as possible by pointing out by rigid pencil marks the ports, loading ports, destinations, rates, charterer's names, and such as that, then the charters came from his desk into the room of the Committee, and each charter from the inception of the Committee until to-day has been read and looked over by each member of the Committee. When we go in session we sit around the table and examine each charter-party, and then the charter parties are put in a pile before the chairman, and then they are taken one by one and acted upon. In cases where we have not the charter-party, the full conditions of charter expressed in telegrams are acted upon, or in cases where there are letters presented, the charter party made in error, we act on the letter.

Q. What was the necessity of all that detail, Mr. Smull, if there was a fixed rule applying to all charters?

(Deposition of J. B. Smull.)

A. You can't make a fixed rule on all charters. Every charter that comes in differs a little bit.

Q. That is what I apprehended; and then as a matter of fact you have to pass an individual judgment on each charter? A. Yes, sir.

Q. Dependent upon various details with respect to the charter, whether it would or would not be approved by the Committee? A. Yes, sir.

Q. And until you had the particular charter before you you could not say whether you would or would not approve it?

A. With the qualification that if a wire was sent with the full details?

Q. Unless you had the wire with full details you could not say whether you would or would not?

A. No, sir.

Q. When was it that the Board finally decided that no neutral could be chartered except to the Board?

A. I believe about March 18, 1918.

Q. Before that time the neutrals could charter to merchants [174] without interference on the part of the Board?

A. Yes, subject to the charter-party conditions, made with our approval.

Q. When was it that you began to interfere with the placing of vessels on the berth for the account of the owner? A. Almost immediately.

Q. I understand, Mr. Smull, that in October and November no vessels were permitted to be placed on the berth for account of the owner?

(Deposition of J. B. Smull.)

A. I would not say that absolutely, I would not say that offhand; it is a big question; that was the idea.

Q. You have not looked into it, you have no recollection about it, is that the situation?

A. I have a recollection of Norwegian boats on the Pacific, we did not want the owners to berth or charter on gross form of charter, for almost immediately we reduced the time charter rates, we were trying to get the owners to come into time charter conditions to reputable firms.

Q. You were feeling your way, you didn't feel you had control of the situation.

A. No, we had control right away of boats that were in this country, we didn't have it when they were up in Canada, up in Vancouver, which was rather a sore point.

Q. You would not undertake now to say that such vessels were not placed in berth during the period here in question?

A. To the best of my recollection there were no boats on berth on account of owners.

Q. Your recollection, I believe you have no record in mind or no memory about it?

A. I do not recollect any boat that was on the berth after the 1st of November, Norwegian boat after the 1st of November.

Q. What periods are you speaking of—I mean around the 3d of November?

A. I would not say the exact date, I would say about the 1st.

(Deposition of J. B. Smull.)

Q. You mean the first part of November, not the first day? A. Yes.

Q. It might include the 3d of November?

A. Yes. [175]

Q. Probably a week or two after?

A. I don't know, about the first of November is about all I can say; it might have been in October because we tried to do that right away.

Q. There is some testimony here of ship brokers out there—and I refer to Page Brothers, you know them?

A. They are not ship brokers, they are freight brokers.

Q. They were not interfered with until the 27th of November, you would not undertake to say that they were not right?

A. We never had a communication from Page Brothers, for approvals.

Q. Their testimony with reference to ships they got freight for—what I am trying to get at is, you would not undertake to say their testimony so far as that was concerned was not correct, you personally have no recollection that would gainsay it? A. No.

Q. With respect to your working in connection with the War Trade Board, that was only a sort of general understanding that you have testified to between you and the War Trade Board?

A. It was an agreement.

Q. As each vessel came up there was no special communication? A. Yes.

(Deposition of J. B. Smull.)

Q. Do you remember whether there was any communication between you and them in reference to the "Bayard?"

A. Not until she was approved.

Q. Mr. Corey, who was the representative of the War Trade Board in San Francisco at that time, testified as follows:

"The charter committee has nothing to do with the War Trade Board.

"Q. You spoke of them. A. They are advisory.

"Q. When were they organized?

A. I don't know.

"Q. Then it is your opinion that the charter committee is advisory to the War Trade Board?

A. Only as regards the destination, the routing of the vessel.

"The COURT.—Q. The scheme that you speak of was in effect as early as October 1?

A. Yes; it was more or less disorganized [176] up until the 15th of January, when we had regular printed forms, and we began to use our judgment as well as possible before that."

A. I do not concur. I will explain, the Chartering Committee has nothing to do with the local agent of the War Trade Board, our dealings are entirely with the headquarters of the War Trade Board.

Q. As far as his actions are concerned, so far as he has testified as to the manner in which he handled the business there you have no suggestion

(Deposition of J. B. Smull.)

to offer, you would not attempt to gainsay what he said was true?

A. Except I know those men have no authority without consulting the head office. The New York office I have worked with pretty closely, he has no authority except from the head office in Washington, he gets all his instructions from there, he is nothing more than a clerk.

Q. Are you making that statement, Mr. Smull, from seeing the records with respect to that situation, or just simply as a matter of personal knowledge on that in cases in which you have been connected?

A. Personal knowledge, yes, cases where I have called the New York man up, and before he can act he must consult Washington.

Q. You would not know there were exceptions at all?

A. Between the head office in Washington and here?

Q. Yes.

A. No, except, if I may add that when the War Trade Board did make exceptions to the clearance of a vessel they have arranged with us before hand, they tell us about it. It got one just before I left the office, and return guarantee had been modified.

Q. So that again is a matter that is subject to exceptions? A. Yes.

Q. You have told us about having looked through the records here and not found any lump sum charters during that period that were approved?

(Deposition of J. B. Smull.)

A. Of neutral boats.

Q. Have you found any that were denied, any record of any that were denied?

A. I simply looked through the approval sheets I had there. [177]

Q. I applied to Mr. Ring to permit me to have access to the records, or find out from the records what the situation was, and I received a letter from him referring me to Mr. Ira Campbell in Washington; can you explain the reason of that?

A. Mr. Campbell is the Admiralty counsel of the Shipping Board in Washington, and Mr. Campbell wrote us in regard to the "Brazil," I believe and we replied to it, and it is the custom of the Committee, as we have no advisory counsel of the Committee, when we get into legal points we don't talk to people, we refer them to the counsel; we know he has had something to do with that case, that probably is the reason of Mr. Ring's reply.

Q. You say Mr. Campbell wrote to you concerning the "Bayard-Beaver" matter? A. Yes.

Q. On his own initiative? A. I don't know.

Q. Was it a reply to a communication?

A. Oh yes, we heard from him first, we didn't know anything about it.

Q. Is that communication accessible?

A. I presume it is down in the office—yes, it is accessible, I don't know, it is a communication from our counsel to ourselves, and I don't know whether I could produce that in court, whether it would be within my jurisdiction.

(Deposition of J. B. Smull.)

Q. Counsel will advise what that privilege is?

A. I haven't any counsel here, this is not a Shipping Board now.

Q. It is immaterial to me, I demand the production, I would like to see it.

A. I will ask Mr. Campbell if I can produce it, Mr. Kirilin is not any more my counsel here than you are; if Campbell says it is all right you can have the letter and have our reply to it.

Q. Is there any reason why I could not have access to those records here and go over them personally? A. I don't know.

Q. As a member of that Board I now make the request?

A. I will ask Mr. Campbell. I will get him on the phone when I get back and I will ask him, and if he says yes I will be pleased to send them over to you.

Q. So you can have it accurate, I want to have an opportunity to [178] go over the records myself.

A. You want to know whether I can show you the exchange letters on the subject of the "Bayard-Beaver?"

Q. Yes. A. What else?

Q. I want access to the records of the chartering committee to ascertain what the records show with respect to the chartering of vessels during this period from November 3 to December 21?

A. You mean as to approvals and disapprovals?

(Deposition of J. B. Smull.)

Q. Yes, as it appertains to the facts we have been examining about in this case?

A. I think that would show the whole thing, we have a sheet that shows approvals and disapprovals every day. The application either shows an approval or disapproval.

Q. You did have a system prevalent during this date of permitting vessels to collect freights between Pacific Coast ports and Oriental ports, a certain rate outward and a certain rate backward, didn't you? A. Yes.

Q. That was \$20 one way and \$50 the other?

A. I think that was about what it was, yes sir, that is on these boats; this very boat; they could take the boats on time charter and then charge the rate to the cargo owners.

Q. Whoever was operating the boats could charge that rate?

A. Yes, then sometimes the rate outward would fluctuate; you say \$20, that was about what it is, it has run up as high as \$35 from the Pacific Coast out; the rate home has been pretty steady at \$50.

Q. That was for vessels placed in berth?

A. Yes, sir, that was vessels placed on berth; that was for neutral vessels placed on berth that had been approved on time charter basis.

Q. You have spoken of the "Kina," "Peru," and another vessel as being owned by the East Asiatic Company, are you positive about that?

A. Yes, sir, a representative who did a great

(Deposition of J. B. Smull.)

deal of that chartering was in New York and had been done for years.

Q. By whom was the application made in those cases? [179]

A. They are generally made through their New York agent, Mr. Larsen.

Q. In these particular instances you don't know about that?

A. I can safely say through the East Asiatic Company, Mr. Jelstrom.

Q. You have a record that will show that?

A. Yes.

Q. I would like to see that record.

A. I don't know where they are, but I guess I can dig them out, it is about the same time, some time between October and December 15.

Q. With respect also to these charters I understand you to say that it required the concurrence of two members of the Committee? A. Yes.

Q. If they didn't concur it went through?

A. If two did not concur it went through as a disapproval; if two did concur or three it went through as an approval.

Q. So sometimes you folks disagreed?

A. Yes, we have our own opinions on things and fight it out.

Q. I presume you have so many of these things, or had during this period so many of these things to attend to that naturally you could not carry in your memory particular instances?

A. There were a great many of them, but the

(Deposition of J. B. Smull.)

ones that have had the long negotiations over, and the ones that have had any discussion and approval or disapproval of the boat, they stand out in my memory, but of course there are hundreds of them I could not recollect at all.

Mr. FRANK.—I think that is all for the present, but after you have finished with your redirect I believe we will adjourn until such time as we can get Mr. Smull back to examine his records, and for further cross-examination.

Redirect Examination by Mr. KIRLIN.

Q. Were there any particular abuses which were designed to be corrected by the appointment of your chartering committee?

A. I don't know whether you can call it abuses.
[180]

Q. Practices?

A. The chief practice the government did not like was the continued advancement of freight rates to leave this country.

Q. One of the objects was to obtain a leveling of those rates downward, to have it uniform?

A. There was not any discussion about it but that was what I always understood, that was the worst feature.

Q. One of your first determinations was fixing approximately what you considered a fair rate on these Pacific vessels of 45 shillings per ton deadweight on time charter? A. Yes.

Q. Was it part of your policy therefore not to favor charters which worked out at higher fig-

(Deposition of J. B. Smull.)

ures, or berthings that worked out higher figures?

A. Yes, anything that we thought would control the situation we adopted that plan.

Q. This offer that has been testified to of \$400-000 for a round trip would of course have worked out a much larger figure than your 45 shilling time charter?

A. I haven't figured it but offhand I would think it would considerably.

Q. It would have been figured if you had had an application for approval? A. Yes.

Q. Whether approval had been sought and would have been granted would have depended on how the rate worked out as compared with your 45 shilling time charter? A. Yes, sir.

Q. Which was your maximum figure at that time?

A. Yes.

Q. Had this relation to neutral vessels chiefly, or did it also relate to American vessels?

A. Neutral vessels.

Q. So that when you testified that you considered individual charter terms in each case I take it that your consideration would have had relation to the rate as well as to the other terms of the charter party. A. Yes, sir.

Q. I understand from the earliest at least there were two members—

Mr. FRANK.—If you will allow me, you are leading the witness.

Q. You have spoken of disagreements amongst the members about time [181] charters, did those

(Deposition of J. B. Smull.)

relate to the allowance of higher charters which amounted to higher rates as they worked out more than 45 shillings on the Pacific?

A. No, no differences in rates, what different clauses would give the charterer more of a concession, or owner more of a concession, but the rates were agreed upon; we have never had a discussion over rates until there came to be a general discussion, when it looked as if the rate should be lowered or raised, but when the rate was once decided on that was a basic rate; but a charter-party would come in, several charter-parties have come in with the same rate but they will have all sorts of clauses rung in that affect the rates, affect the conditions, that is where there would be arguments pro and con as to whether those clauses should be allowed to stay in.

Q. Whether the particular clauses amounted to an increase in rates?

A. Yes, you would be surprised to find out how many things were rung in.

Q. You had a good deal of experience in chartering of steamers, questions arising on the purchase of charters, I suppose, in your business?

A. I have.

Q. I believe you are a member of the Produce Exchange?

A. The steamship committee of the Produce Exchange, arbitrations of steamship matters are brought up before them.

(Deposition of J. B. Smull.)

Q. Is there any commercial custom as to measuring claims for damages?

FRANK FRANK.—Objected to.

Q. On offers of charters which are not affected in the first place, is there a custom as to measuring claims for damages?

A. That is the Arbitration Board of the Produce Exchange?

Q. No, is there a custom of measuring claims on damages by reference to unaccepted offers for charters?

Mr. FRANK.—Objected to.

A. There is a general practice on arbitrations for the different committees in the New York Produce Exchange that consequential [182] damages are not considered. In other words a trade that has not been put through, we consider the man's actual loss, what he would have lost on the local market and not on a possible trade that might have been made between a ship owner and a charterer. It is not law with us down there, it is equity, common sense. For instance, until more recently before the main arbitration committee the man has got to plead his own case, we are all members of the association, he can't have his attorney with him. I don't suppose we go contrary to the absolute law we know, but it is a matter of equity and common sense.

Q. What is the customary practice of making claims where no deal is concluded?

(Deposition of J. B. Smull.)

A. The man has actually lost his money, the time charter market is the market on which the thing is figured. If he loses two or three days he is entitled to what he could have earned under a time charter, unless he is tied up to an agreement on a different form of charter which specifies so much demurrage, that qualifies it, but where the trade is not made we have not considered the loss the man might have made on a possible trade.

Recross-examination by Mr. FRANK.

Q. It is a fact, is it not, that on these time charters that the Committee compel the owner to take the charter at a certain rate and is permitted to charge a very much higher rate for the cargo?

A. He is allowed to charge a rate that will give a fair profit.

Q. You have testified to \$50 and \$35 on a round trip?

A. I would like to qualify that, \$20 and \$50.

Q. That is \$70 on a round trip on a deadweight trip? A. Yes.

Q. That is more than 45 shillings?

A. Yes, he runs his chances on the deadweight charter.

Q. The Government also in commandeering vessels charges a very much higher rate to cargo owners in carrying their cargo, does it not?

A. I would not say very much higher, there is not very much profit, the Government does not charge as much as the individual, [183] the policy has not been to make a large amount of money,

(Deposition of J. B. Smull.)

they charge enough to make a fair working profit, including the overhead as we say.

Q. Considerably more than 45 shillings?

A. If you take a boat on the Pacific Coast, yes.

Q. Mr. Kirilin then was wrong when he suggested that the purpose of this practice was to bring down the rates to 45 shillings to the cargo owner?

A. To bring down the rate to the cargo shipper, yes, the cargo shipper pays more than 45, the time charterer pays 45.

Q. It is not the tendency suggested to Mr. Kirilin to bring down the rate to 45 shillings?

A. The cargo rates, they allow a little more. On this freight boat when we chartered her we took her out to Australia and brought her back with a full cargo of wheat, we charged on that wheat just enough to pay for the hire of the ship and the overhead.

Q. Do you recollect what the rate was?

A. 95 shillings.

Q. Charter rate?

A. No, 95 shillings a ton on the wheat.

(By Mr. KIRLIN.)

Q. Per ton delivered? A. On the wheat.

(By Mr. FRANK.)

Q. One on the deadweight capacity and the other on the cargo capacity?

A. The time charter is on the tonnage deadweight capacity including cargo, bunker and stores; the other is only on cargo, so he has to have a little

(Deposition of J. B. Smull.)

more for the deadweight of bunkers; in that round trip he has to take 1000 tons.

Q. Take this vessel for instance which in these telegrams shown to you is quoted 5300 tons deadweight and the rate permitted, say it is \$20 and \$50, which would make \$70 for the round trip, that would make \$371,000 for the round trip for that vessel? A. Gross freight.

Q. Not so very much less than \$400,000, is it?

A. No.

Q. So there could not have been any policy such as that suggested by Mr. Kirlin as to move you to deny \$400,000 and permit the [184] \$371,000?

A. Except we didn't want it on gross charter at all, we wanted it on time charter. Mr. Frank, you are not right on that figure because she has only a carrying capacity of 4200 tons, you don't get paid on that, only on the gross tonnage of the cargo carried, you have to go all the way across the Pacific and back, she only gets paid on her cargo so that would be about \$290,000.

Q. When she touches a second port you allow an increase on that?

A. Well, it all depends on the conditions, at times there is an increase on two or three ports.

Q. There is a reason for that?

A. A special reason.

Q. It is more expensive?

A. Yes, sometimes a man will trade for a boat for three ports discharge, then he will want another one, they will have to dicker on the extra

(Deposition of J. B. Smull.)

cost of going into that port. That figure of \$370,000 was wrong, she would not gross \$200,000.

Mr. FRANK.—We can work the figures out on that.

(By Mr. KIRLIN.)

Q. Mr. Frank put to you some figures and multiplied the whole by \$70 a ton?

A. The outside would be about \$290,000.

Q. So there was an excessive rate allowed?

A. Yes, with the \$290,000, all expenses have to be taken out, the owner would have to pay all the port loading and discharging expenses, everything pertaining to that cargo the owner has to pay, so he doesn't make anything like that.

Q. On a time charter he does not have to pay those?

A. No, the charterer pays all of it on time charter.

Q. Except the wages, provisions, stores and engine stores? A. Yes.

(By Mr. FRANK.)

Q. There is a difference in your mind between a gross charter and lump sum charter?

A. Well, it all depends on what form of charter, you can have a gross lump sum or you can have a time charter lump sum; a gross form of time charter and a gross form on rates is the [185] same; your gross form is the number of tons multiplied by what you are allowed on the gross charter.

Q. Whether or not that would be approved depends, as I understand you in reply to Mr. Kirlin, upon the provisions of the charter party itself out-

(Deposition of J. B. Smull.)

side of the fact that it is a lump sum?

A. Yes, sir.

(By Mr KIRLIN.)

Q. Particularly as to how high the lump sum is, how it worked out as compared with your 45 shillings? A. Yes.

Q. Did you compute about how much the value of the use of the vessel per day would be on the basis of 45 shillings per ton deadweight on time charter?

A. I have.

Q. How much was it?

A. It is \$1888 per day, that is at 45 shillings per ton, deadweight capacity of 5200 tons.

Adjourned for purpose of permitting Mr. Smull to see if he can permit Mr. Frank to examine his records, subject to his further cross-examination.

[Title of Cause.]

New York, Oct. 16, 1918.

Met pursuant to adjournment.

Present: Mr. WOOLSEY and Mr. FRANK.

Recross-examination of J. B. SMULL continued.
(By Mr. FRANK.)

Q. Mr. Smull, at the time of our adjournment last time you were going to make application to Mr. Campbell to see whether or not I could be permitted to examine your records. I understand you did make application to Mr. Campbell?

A. I did.

(Deposition of J. B. Smull.)

Q. And received a telegram in reply?

A. Yes, sir. [186]

Q. This is the telegram (handing witness paper)?

A. This is the telegram, the original and a copy.

Mr. FRANK.—I offer the telegram in evidence.

Mr. WOOLSEY.—Objected to as irrelevant and immaterial.

It reads as follows:

918 Oct 1 AM 4 48

C21 W 12 GOVT NL 4 EX

WA Washington DC Seht 30

Smull

Chartering Committee Custom House New York NY Law Division Shipping Board Has no Objection to Your Showing Nathan Frank List of Approved and Disapproved Charters Between November Third and December Thirty First Nineteen Eighteen Stop I Have Never Seen Your Files and Know Nothing of Their Contents or General Information Contained Therein so am Not in Position to Definitely Advise Whether You Should Let Frank Examine Them Generally Stop if He Represents Parties Having or Intending to Present Claims Against United States or if Your Files Contain Information Which Should Not be Given Publicity Your Committee Should Exercise Its Own Discretion as to Permitting Him to Make General Search of Files Stop You Should However Give Him Full Information and Exhibit to Him All Documents Bearing on Bayard Beaver Demurrage Controversy.

(Deposition of J. B. Smull.)

CAMPBELL ADMIRALTY COUNSEL SHIPPING BOARD.

Recd. New York Chartering Committee U. S. Shipping Board Oct. 1 1918

Q. I understand that subsequent thereto your Board had a meeting to consider whether or not I was to be permitted to examine your records?

Mr. WOOLSEY.—Not your Board, your Committee.

Q. Your committee? A. Yes.

Q. And the Committee decided that I was not to have that privilege? A. Yes. [187]

Q. At your former hearing you testified that you went through the records from the time that you went on the Committee and found no approval of steamers under foreign flag, round time charters; do you remember so testifying?

A. Round time charters—it should not be time charters, it ought to be round trip charters.

SMULL—Recross.

Mr. FRANK.—I ask that that correction be made.

Q. Since then I understand you have also made examination and found no cases of disapproval of any such charters?

A. Yes sir, between, as you requested, the dates of November 3d and December 21st.

Q. Didn't you make an examination to cover the same time to which you testified in this case?

A. Yes, that is the time I believe.

(Deposition of J. B. Smull.)

Q. The time you testified to here was the time you entered upon the duties in the Chartering Committee—"From the time I went in there no approval of steamers on round trip steamers up to the first of the year"? A. Yes, that is all right.

Q. "Yes, I went through our list of approvals up to about the 1st of the year and from the time I went in there are no no approvals of steamers under foreign flag, round trip charters."

A. Round trip charters; we use the words "round trip charters" to mean time charter round trip, and the record of that answer seems to be a little confused because I did not mean no record of round trip time charters; there was no record of charters for round trip on the gross form of charter.

Q. Is there any record of any lump sum charters during the entire time mentioned, either of approval or disapproval? A. Not for round trip, no.

Q. Am I to infer from that that there may be some others in the record for approval or disapproval of lump sum charters for a single trip either way? A. Yes, there were.

Q. That is the few that you referred to as being homeward? [188]

A. Homeward, yes.

Q. Homeward bound? A. Yes, sir.

Q. Otherwise there is nothing in the record?

A. Nothing else.

Q. That covers the entire proposition without any

(Deposition of J. B. Smull.)

distinction at all; you are making a distinction of round trip that covers the whole thing

A. Gross form.

Q. Lump sum charters

A. On lump sum charters.

Q. You also were to produce a letter written by Mr. Campbell respecting this matter to you on the 3d of June? A. Here it is.

Witness produces letter.

Mr. FRANK.—I offer that letter in evidence.

Mr. WOOLSEY.—Objected to as irrelevant and immaterial.

It reads as follows:

UNITED STATES SHIPPING BOARD.

Washington.

June 3, 1918.

Mr. J. B. Smull,
Chartering Committee,
United States Shipping Board,
Washington, D. C.

Dear Mr. Smull:

BEAVER—BAYARD COLLISION.

On November 3, 1917, the Norwegian motor ship Bayard was in collision with the American steamer Beaver. The Beaver has admitted fault, and there is now pending in litigation the question of the demurrage which the owner of the Bayard is entitled to receive for the period that the Bayard was laid up for repairs. This extended from November 3 to December 21. Damages are being asked in the

sum of \$200,000, at the rate of \$3,888 per day.

The owner of the Beaver, the San Francisco and Portland Steamship Company, is informed that it would not have been possible for the Bayard to have been operated during the period of repairs, owing to settlement of a controversy which was then pending with the Norwegian government. [189]

The George Washington has been laid up in San Francisco harbor for many weeks prior to the collision, and so continued for a considerable time thereafter. The Norwegian steamer Storvicken was similarly laid up at Seattle. It is the desire of the owners of the Beaver to place before the United States Court at San Francisco full information as to the status of the Norwegian ships, so far as concerns their ability to operate during the period from November 3 to December 21. It is of interest to the Law Division of the Shipping Board that such information be given the Court, because we desire to avoid the precedent of any judgments in the United States courts fixing heavy demurrage damages in collision cases. The Board is soon to be confronted with voluminous litigation in collision cases, and it is to its interest to have the demurrage rates kept down. The owners of the Beaver would like to call some one who can testify to the following information:

(1) The date when the Bayard first applied for bunker fuel, and by whom such application was signed.

(2) The date when the owners of the Bayard executed the required agreement promising to re-

turn to the port of San Francisco and here discharge her cargo, and the parties by whom this was signed.

(3) If this last-named agreement was signed by the captain of the vessel and the agents for her owners, when, if at all, and in what form authority was presented from the owners for the execution of the same.

(4) The date when the permission for bunker fuel was granted.

(5) Any other information throwing light on the question whether the Bayard was free to sail between November 3 and December 21. She did not actually sail until January 18.

The San Francisco and Portland Steamship Company is also [190] seeking the following information respecting the motor ship Brazil, which entered the port of San Francisco on November 13, 1917, and did not sail until after January 14, 1918, viz.:

(1) The date when the Brazil applied for permission for bunker fuel.

(2) The date of the execution of agreement to return to the port of San Francisco and discharge cargo.

(3) The date of permit.

(4) The names of parties who executed the application and agreement on behalf of the owner, and information concerning the authority disclosed to Mr. Corey, the San Francisco representative of the War Trade Board, so to execute.

(Deposition of J. B. Smull.)

Also, can you throw any light upon the whereabouts of the following vessels, between November 3 and December 21, and any information as to whether they were prevented from operating by the same causes which may have prevented the use of the Bayard:

S. S. "BALZAC"	S. S. "BRIO"
S. S. "BAMSE"	S. S. "BRISK"
S. S. "BOR"	S. S. "BRUNO"
S. S. "BRILLIANT"	

Perhaps Mr. Carey Cook is in position to give this information. If not, is there anyone in your office whose deposition could be taken? The case is set for trial now on June 10.

Very truly yours,,

IRA A. CAMPBELL,

Admiralty Counsel.

Q. I presume, Mr. Smull, as a member of that Board you feel interested, as well as Mr. Campbell, in the desire of the Board to avoid the precedent of any judgments in the United States Courts [191] fixing heavy demurrage damages in collision cases, for the reasons stated in that letter?

A. Yes.

Q. You have produced here the card memorandum of your office respecting the "Peru," "Arabian" and "Kina"?

A. I have.

Q. Those are the vessels concerning which you testified on your direct examination as having been chartered on lump sum charters from the Orient to San Francisco, are they not?

A. Yes.

(Deposition of J. B. Smull.)

Q. The "Kina" it appears from this her home-ward charter, concerning which you testified, was approved on the 7th of December, 1917?

A. Yes.

Q. And subsequently she went upon a time charter for the Government under date of August 2, 1918? A. Yes, sir, at 35 shillings time charter.

Q. To Hawaii? A. And return.

Q. And return. The "Arabian" was approved on the 2d day of August, 1918, for a like voyage?

A. Time charter for the Shipping Board at 35 shillings.

Q. To Hawaii? A. Yes, sir.

Q. The "Peru" was approved for homeward voyage on the 8th day of December, 1917, Philippines to San Francisco \$50, and \$15,000 additional extra loading ports, that is right, is it. A. Yes, sir.

Q. And she subsequently went under time charter to the Shipping Board on the 2d day of August, 1918, Hawaii and San Francisco 35 shillings?

A. Yes, sir, for the round trip.

Q. The "Kina" was also \$50?

A. Yes, sir, on a voyage from Manila to San Francisco the rate was \$50, gross form charter.

Q. \$50 on account of deadweight, isn't it?

A. Yes, sir, \$50 per ton on her deadweight cargo capacity.

Q. And the same in the case of the other vessels?

A. Same in the case of the "Peru" for this home-ward voyage.

(Deposition of J. B. Smull.)

Redirect Examination by Mr. WOOLSEY.

Q. At the meeting of the Chartering Committee at which it was voted that Mr. Frank would not be given the privilege of examining [192] your files did you vote or participate in the meeting?

A. I did not vote.

Q. After the Committee had decided that this permission should not be granted was a report of the decision made to the Shipping Board?

A. A wire was sent to the Shipping Board that the Chartering Committee had decided that the full records showing all approvals and disapprovals made on all business from the first of the year could not be shown Mr. Frank.

Q. Did you receive a telegram from the Shipping Board or anyone connected with it, in answer?

A. We received a reply from Mr. Burling, the chief admiralty counsel of the United States Shipping Board.

Q. Is this the reply (handing witness paper)?

A. Yes, sir, this is the reply.

Mr. WOOLSEY.—I offer the telegram in evidence.

It is marked Claimant's Exhibit "X" and reads as follows:

Claimant's Exhibit "X."

AN 35 GOVT 1918 Oct 5 PM 5 14

A484 WASHINGTON DC 438P 5

Chartering Committee

Custom House New York

Approve your decision not allow Frank examine

(Deposition of J. B. Smull.)

file but approve showing all letters relating to case in question and furnish all information on subject in your possession.

BURLING,
Shipping Board.

Q. Have you in pursuance of Mr. Burling's suggestion shown Mr. Frank all letters relating to the case in question, furnished him all information on the subject in your possession?

A. I have, everything he requested I have.

Q. On this case?

A. Yes, except our full record of approvals and disapprovals, as to which I have testified.

Q. Regarding this particular case of the "Beaver," in which you [193] are giving evidence now, you have shown him all the information on the subject in your possession? A. Yes.

Q. And all letters relating to this particular case?

A. Yes.

Q. The "Arabian," did I understand you to say in answer to Mr. Frank's question that there was not any homeward charter on that vessel?

A. Yes. Her previous business before she was fixed to the United States Shipping Board on time charter was a cargo loaded in the East for account of the owners.

Recross-examination by Mr. FRANK.

Q. What you did show me over there was just the telegrams and papers that have been put in evidence? A. Yes.

(Deposition of J. B. Smull.)

Q. That is all? A. Yes.

Q. I had no opportunity to see your approval list or disapproval list, or any papers in the custody of the Committee?

A. No, but you saw all papers bearing on this question outside of the approval and disapproval lists.

Q. By that you mean these papers we are talking about? A. Yes.

Q. Did I understand you to say the "Arabian" was loaded on berth for account of the owners?

A. I believe she was. We have no record of the approval by the Board to show she was loaded in the East before we started in; we started in about the first of October.

Q. That loading was not in San Francisco?

A. No, loaded in the East for San Francisco.

Q. For San Francisco but on the berth?

A. On the berth, yes, for owners' account, no charter covering the transaction.

Mr. FRANK.—That is all. [194]

[Title of Court and Cause.]

Southern District of New York,—ss.

I, C. May Hudson, a Notary Public in and for the County of New York, State of New York, duly appointed and empowered to act in and for the County of New York, State of New York, Southern District of New York, duly authorized under and

by virtue of the Acts of Congress of the United States and of the Revised Statutes to take depositions *de bene esse* in civil cases depending in the Courts of the United States, do hereby certify:

That the foregoing deposition of J. B. Smull was taken on behalf of claimant before me, at No. 27 William Street, Room 1614, New York City, on September 30, 1918, that an adjournment was taken to October 16 for further examination; that I was attended upon the taking of said depositions by J. Parker Kirlin, Esq., & John M. Woolsey, Esq., for the claimant, and by Nathan Frank, Esq., for libelant; that said witness was by me first cautioned and sworn to tell the truth, the whole truth and nothing but the truth, and that he was thereupon examined by counsel present; that I took down his testimony in shorthand and caused the same to be transcribed in typewriting by a person under my personal supervision and who is not interest in this cause. [195]

I have retained the said deposition in my possession for the purpose of delivering the same into the United States Post Office in the City of New York in an enclosed post-paid wrapper, registered, to the Clerk of the above-entitled court on October 19, 1918.

I further certify that I am not of counsel or attorney for any of the parties in said deposition or caption named, nor in any way interested in the event of the above suit.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal this 19th day of October, 1918.

[Seal]

C. MAY HUDSON,
Notary Public Kings Co. No. 241.
Cert. filed in N. Y. Co. No. 211.
My commission expires March, 1919.

[Endorsed]: Filed Dec. 18, 1918. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [196]

[Title of Court and Cause.]

Stipulation Dispensing with the Taking of the Deposition of J. Beaver White.

For the purpose of dispensing with the taking of the deposition of Mr. John Beaver White, it is stipulated and agreed by and between Nathan H. Frank, Esq., proctor for the libelant in the above-entitled cause, and Walter S. Penfield, Esq., acting for and in behalf of the respondent and the claimant in said cause, that if the deposition of said John Beaver White were taken he would testify as follows:

That he is now and has been since its organization a member of the War Trade Board of the United States, being named as such member as representative of the United States Food Administration; that in the month of November, 1917, Frank C. Munson was a member of said War Trade Board, being a representative of the United States Shipping Board thereon; that he, Mr. White, was ac-

quainted with one G. W. McNear; that he received a telegram from Mr. McNear dated November 24, 1918, referring among other things to a contemplated voyage of the [197] Norway-Pacific motor ship "Bayard" to New Zealand and return, and requested assistance in getting approval of the voyage; that upon receipt of the same he turned it over to Mr. Munson for attention because of the fact that the matters discussed in said telegram were within the line of work then being handled by Mr. Munson.

It is further agreed that this stipulation may be received in evidence in the above-entitled cause as and for the testimony of said John Beaver White, waiving all objections to the same based upon matter of form, but reserving all objections as to competency or relevancy.

Subscribed in triplicate copies this 3d day of October, 1918.

NATHAN H. FRANK,
Proctor for Libelant.

WALTER S. PENFIELD,
Acting for and in Behalf of Respondent and
Claimant.

[Endorsed]: Filed Dec. 18, 1918. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [198]

[Title of Court and Cause.]

No. 16,303.

(Additional Testimony Taken on Submission of Cause.)

Wednesday, December 18, 1918.

Counsel Appearing:

For the Libelant: NATHAN H. FRANK, Esq.

For the Respondent: FARNHAM T. GRIFFITHS, Esq.

Mr. FRANK.—Your Honor will remember that this case was tried up to a point where Mr. Griffiths wished to take some depositions in the East. He took those depositions. I don't know about his introducing them. In the meantime there are some little matters that I wish to present to the Court.

I have here a charter-party, under date of the 22d day of March, 1918, of the Danish steamer "Transvaal," which Mr. Griffiths is prepared to admit was made and executed and approved by the chartering committee of the board and inter-allied chartering executive committee of London.

Mr. GRIFFITHS.—The chartering committee. Was it approved, as a matter of fact, by the inter-allied chartering executive committee?

Mr. FRANK.—Well, as a matter of fact, the voyage was performed under the charter-party.

Mr. GRIFFITHS.—Yes, I know that.

Mr. FRANK.—We ask that that be admitted in evidence; we [199] will call it Libelant's Exhibit "A" as of this date.

Mr. GRIFFITHS.—By the way, Mr. Frank, with regard to the offer of that charter-party, dated March 22, 1918, I consent to that, that is, I stipulate that the charter-party was executed and that it was approved by the chartering committee of the Shipping Board, and that the vessel sailed under that charter; that is, I do not question the charter-party, and that that is a true copy. My stipulation does not go to any consent to its materiality. I claim that it is away beyond the period examined into in this case, and in the depositions taken in New York.

Mr. FRANK.—I understand that.

Mr. GRIFFITHS.—What I mean was that I know the charter was executed, but I claim that it is immaterial and irrelevant and was offered too late and we could not examine our witnesses in the East upon it.

Mr. FRANK.—That was an entirely different proposition. It was offered just as quickly as I got it. I showed it to you just as quickly as I got it. I surely did not hold it out.

Mr. GRIFFITHS.—I don't question that at all.

Mr. FRANK.—And if those fellows had allowed me to examine their record I would have had it right there.

Mr. GRIFFITHS.—I understand that in the East they asked you if you wanted any further examination of Mr Smull beyond the end of December; this examination covered up to the end of the December.

Mr. FRANK.—I asked them for a full examination of all of their records and they declined to

let me have them; then it was limited to January 1st, and even that was declined.

Mr. GRIFFITHS.—Well, the record will show what the situation is in that regard. [200]

Mr. FRANK.—On page 72 of the record, your Honor, we have an answer by Mr. Kutter on the 12th and 13th lines, in which he says: “She has carried in mixed cargo 3000 tons of copra, about 1500 tons of sugar, and a couple of hundred tons of cocoanut oil.” It is agreed that be amended to be 3047 tons of copra —

Mr. GRIFFITHS.—I have it here 3042, Mr. Frank; that must be an error.

Mr. FRANK.—No, I don’t think so; it says here 3047.

Mr. GRIFFITHS.—Well, whatever the manifest shows.

Mr. FRANK.—Yes, whatever the manifest shows. 3047 tons of copra, 1610 tons of sugar, and 203 tons of cocoanut oil.

The COURT.—You can just mark those figures on the original; the Reporter can correct that upon the original, or better still, just paste a slip in on that page, so my attention will be called to those corrected figures.

Mr. GRIFFITHS.—That is admitted subject to our examination of the manifest.

Mr. FRANK.—That is all.

Mr. GRIFFITHS.—I will introduce a stipulation entered into Washington between Mr. Frank and our representative there, dispensing with the deposition of J. Beaver White and making an

agreed statement as to what he would have testified to if called.

Also the deposition of Richards, a witness on behalf of the respondent and claimant, together with the agreement as to the time and place of taking it. Also the deposition of J. B. Smull, taken on behalf of the claimant in New York on September 30, 1918.

Mr. FRANK.—Now, if your Honor please, the balance of the testimony we intended to take this morning related to the question of over time and work on the engines. We might possibly take that today or tomorrow by deposition. With that we will submit the cause. I don't know that it would be of any value to attempt to argue the case orally to your Honor; there is a great deal of detail to it. I am content to brief it. I have my brief [201] practically finished and am ready to file it. Mr. Griffiths can take such time as he deems desirable in which to reply.

Mr. GRIFFITHS.—I suppose we had better set some time in order to start it running anyway.

Mr. FRANK.—You can fix your own time.

Mr. GRIFFITHS.—I will take 15 days after the filing of your brief, and then perhaps get further time from you.

Mr. FRANK.—I will have mine in in sight of 15 days.

There is an element of physical damage, the repair damage, that we introduced no proof upon. It was expected that we would get together and agree on that; we tried to agree last night and we

rather ran against a snag; I don't know if we can agree upon it, or not; if not it will be understood that that will be referred to the Commissioner.

I want to amend article 4 of the libel wherein it alleges that the same will exceed the sum of \$200,000, by making it specifically, \$348,000; and also to amend the prayer to conform thereto.

Mr. GRIFFITHS.—I have no objection to the amendment upon the understanding, which Mr. Frank now confirms, that the amendment is not given to conform to the proof, because I do not admit that there has been any proof of any such amount, or of any amount in excess of the original claim; and also upon the understanding that there is going to be no request for any change in the bonds now outstanding.

Mr. FRANK.—What I want to make clear is that the amendment is made just the same as if the amendment had been asked for before any proof had been offered.

Mr. GRIFFITHS.—Yes; in other words, neither of us make any claim for the present as to what has been proved.

Mr. FRANK.—That is it; neither one is making any claim as to the proof by reason of this amendment, but the amendment is made as if it had originally been put in the libel in that amount.

[Endorsed]: Filed Dec. 26, 1918. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [202]

[Title of Court and Cause.]

(Depositions of Joseph Blackett and Frank H. Evers.)

BE IT REMEMBERED: That on Thursday, December 19, 1918, pursuant to stipulation of counsel hereunto annexed, at the office of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Joseph Blackett and Frank H. Evers, witnesses called on behalf of the claimant.

F. P. Griffiths, Esq., appeared as proctor for the claimant, and Nathan H. Frank, Esq., appeared as proctor for the libelant, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witnesses may be taken *de bene esse* on behalf of the claimant at the office of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Thursday, December 19, [203] 1918, before Francis Krull, a United States Commissioner for the

(Deposition of Joseph Blackett.)

Northern District of California and in shorthand by Charles R. Gagan.

(It is further stipulated that the depositions, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived, unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof are hereby expressly waived.)

Deposition of Joseph Blackett, for Claimant.

JOSEPH BLACKETT, called for the claimant, sworn.

Mr. GRIFFITH.—Q. What is your address?

A. 454 California Street.

Q. That is your business address?

A. My business address.

Q. What is your business?

A. Surveyor to Lloyds Register.

Q. Did you have anything to do with relation to the repairs on the Motor Ship "Bayard" after her collision with the "Beaver" last year?

A. Yes.

Q. Will you just explain what that relation was?

Mr. FRANK.—We object to that because the

(Deposition of Joseph Blackett.)

agreement is the best evidence of what his relation was.

A. It was on behalf of the underwriters of the "Beaver," to take particulars of the damage.

Mr. GRIFFITHS.—Q. What do you mean by taking the particulars of the damage?

A. Well, to see after the extent of the damage and to agree with the recommendations for her repairs. [204]

Q. Where were the repairs being done?

A. What part of the ship do you mean?

Q. No, where was she being repaired?

A. At the Union Iron Works at the Potrero.

Q. During what period of time was she there under repair, that is, how long?

A. From November 9 until December 21, 37 days.

Q. Does that include or exclude the time that she was on the dry-dock?

A. That includes the time she was on the dry-dock.

Q. That is to say, the dry-docking time and the repairing time overlap?

A. The dry-docking was within the period of November 9th to the 21st of December.

Q. Will you state again, Mr. Blackett, what days she was under repairs, by dates?

A. November 9 was the beginning of the repairs, the first day there was any work on the ship; the last date when the repairs were completed, when the men were working on board, was December 21st.

(Deposition of Joseph Blackett.)

Q. Was there any overtime work?

A. There was overtime work on the dry-dock.

Q. Can you say how much overtime, how many days of overtime?

A. Three; I think there were three nights they worked on the dock.

Q. Can you tell us how much time would have been saved if overtime had been worked through-out, giving the estimate conservatively?

A. Well, if they had worked a double shift on that particular job they could have cut the time one-third, or more than one-third, if they worked two shifts.

Q. Do I understand you to say that one-third is a conservative estimate?

A. One-third is a conservative estimate.

Q. How much would that have increased the expense, approximately?

A. That would have doubled up.

Q. If they worked a double shift for that time?

A. Yes, it would have doubled up the expense.

Q. Was any work done upon the "Bayard" there, other than repairs necessitated by the collision?

A. Yes, there were a number of [205] owner's repairs in the engine-room, building up of platforms, stiffening up of dynamos—dynamo engines—and the ordinary overhauling of the engines.

Q. Was there any need of overhauling the engines on account of the collision?

A. Not for damage, not on damage account.

(Deposition of Joseph Blackett.)

Q. Well, on any account arising out of the collision, was there any need?

A. We agreed to that, all parties that were on the survey at the time.

Q. That is, agreed that there should be no overhauling on account of the collision?

A. The list of work was drawn up and signed by all parties in Mr. Frank's office here.

Q. And it did not include the overhauling of the engines?

A. That list did not include the overhauling of the engines.

Q. Will you state whether or not you had any authority as to directing whether there should be overtime worked, or not?

Mr. FRANK.—That is utterly immaterial; that is his conclusion. A. None whatever.

Mr. GRIFFITHS.—Q. Was it ever indicated or suggested to you by surveyors or others there representing the ship that there should be overtime used? A. No, none at all.

Mr. FRANK.—Just a moment: That is also immaterial and I object to it on that ground.

Mr. GRIFFITHS.—I think that is all.

Cross-examination.

Mr. FRANK.—Q. Now, Mr. Brackett, of course, previous to November 9th, and between November 3d and November 9th, you folks were engaged in surveying the vessel and ascertaining the damage

(Deposition of Joseph Blackett.)

in order to agree on specifications for the repairs, were you not? A. Yes.

Q. So that from November 3d to the time she went to the dry-dock, that time was necessarily engaged in order to prepare for the repairs?

A. We made one survey; if I remember rightly, [206] it was the 6th; that was the first survey of the vessel. It was made by the owner's classification and the underwriter's representatives.

Q. You say on the 6th you made a survey?

A. To the best of my recollection it was on the 6th.

Q. And previous to the 6th there was of course inquiry made—When were you first called in by these parties to ascertain whether or not you would serve in this matter?

A. I don't remember, Mr. Frank, but the first date of survey in my book is November 6th.

Q. But previous to that you were called in and there were negotiations back and forth to see how this thing could be arranged, were there not?

A. None at all, no.

Q. With respect to you.

A. I was called right on the survey.

Q. When, on the 6th?

A. Probably a day previous to the 6th; I made arrangements to make the survey on a certain date.

Q. You don't know whether it was the 3d or the 4th?

A. I know the survey was held on the 6th.

(Deposition of Joseph Blackett.)

Q. But you don't know whether the negotiations looking to the making of those arrangements proceeded promptly on the 3d and culminated on the 6th?

A. I don't remember about that. I am going by my note-book as holding the survey on the 6th.

Q. Of course, it is always necessary to ascertain the conditions and arrive at some sort of an arrangement before an agreement for a survey of that sort is made?

A. Not always; you can get half an hour's notice sometimes.

Q. That is, between you and these other people, but as between the parties themselves, I mean the "Bayard" people and the "Beaver" people, those things are not done overnight, are they?

A. I am not familiar with what occurred there.

Q. You only know when you were called in?

A. I only know when I went to the case; whether I got an hour's notice or a day's notice I could not tell you. [207]

Mr. GRIFFITHS.—It is obviously not competent for him to testify to negotiations in which he was not concerned.

Mr. FRANK.—Certainly it is not competent but I do not wish the inference to be drawn that this thing was not promptly taken up from the fact that this man does not know what happened before.

Q. The Union Iron Works were very busy at that time, were they not?

(Deposition of Joseph Blackett.)

A. I have not any idea of their state of work at that time.

Q. With respect to overtime, you say the expense would have doubled?

A. I should say doubled, yes, if they had worked a double shift.

Q. Overtime, anyhow, is double time, isn't it?

A. If you work it in two shifts, 8 hours, the two shifts get the same pay.

Q. The two shifts? A. Yes, of 8 hours each.

Q. But for overtime they get double pay and that makes the cost trebled instead of doubled?

A. If they work them right through.

Q. That makes treble cost instead of double?

A. Treble cost.

Mr. GRIFFITHS.—Please note the "if" there.

Mr. FRANK.—Who is going to note it?

Mr. GRIFFITHS.—I want the court to note it.

Mr. FRANK.—Q. And besides that there is a loss in efficiency, isn't there?

A. In working men right through, yes.

Q. A very considerable loss?

A. It is hard to estimate the loss.

Q. It is difficult to tell what it is but it is considerable?

A. It is quite some, yes. It is only natural to imagine that a man working 8 hours during the day and then continuing another 8 hours at night, he is not going to do as much at night as he will during the day.

(Deposition of Joseph Blackett.)

Q. And another fact is, and taking it from your experience, and not arguing, that it is natural, you know as a matter of fact that they do not accomplish nearly as much, don't you?

A. They do not accomplish nearly as much. [208]

Q. Whether that is from lack of nervous force or whether it is owing to a disposition to soldier at night, the fact remains?

A. I think fatigue enters into it.

Q. Fatigue enters into it, and soldiering enters into it too? A. Possibly.

Q. They cannot be supervised in the same way: Isn't that right?

A. Yes, but I think it would be more than fatigue.

Q. Now, with regard to the repairs in the engine-room, the overhauling, that did not interfere with or delay the other repairs, did it?

A. That was gone ahead with at the same time.

Q. It did not interfere at all?

A. I didn't see the machinery at all. Not being concerned in the classification of the vessel, I did not bother with the machinery end because we eliminated that right from the start.

Q. Well, so far as your observation went, it did not interfere at all or delay the other repairs?

A. Well, it could not have interfered with repairs being at another end of the ship—absolutely.

Q. Now, with respect to the necessity of overhauling the engines by reason of the damage, you know as a matter of fact that the vessel received a very severe blow, do you not?

(Deposition of Joseph Blackett.)

Mr. GRIFFITHS.—Just a moment; I don't know that he does, he was not there.

Mr. FRANK.—We will see whether he was, or not.

A. I saw the amount of damage to the stem.

Q. And you saw the position of it, and everything, didn't you, and from that you could draw your conclusion that she received a very severe blow?

A. Yes, and on that the recommendations of repair of the damage were based.

Q. In your opinion, of course, a vessel receiving a blow of that nature, with engines of the kind that she had, and the connections, she might be expected to receive a shock that would render an examination necessary to ascertain whether or not the [209] alignment or some other element in the engine-room had not been affected.

A. We did not consider it so, at least I didn't.

Q. The others did, didn't they, and they told you so?

A. The owners made the claim that such might be the case.

Q. That such might have been the case, and for that reason they wanted to overhaul the engines in order to feel that the vessel was seaworthy to go out; isn't that right?

A. I don't know what promptly them to do that, to overhaul the engines, but we did not consider it necessary on account of this damage, on account of the blow that she was struck.

(Deposition of Joseph Blackett.)

Q. But they did? A. They overhauled them.

Q. Didn't they state their reason for it at the time?

A. They stated that possibly some derangement had been caused by the collision.

Q. And that they deemed it necessary to overhaul them for that purpose and for that reason?

A. That is the plea they put forward.

Q. Overtime, or working overtime on a repair job, is a matter of special arrangement, is it not?

A. Usually all parties connected with the case and representing the various interests are consulted in the matter.

Q. Without an agreement that overtime shall be used, you would not consider that anybody was warranted in using overtime, would you?

Mr. GRIFFITHS.—What do you mean? I don't understand the question.

Mr. FRANK.—Q. I mean that straight time is the ordinary method of repair work, and without some direction or request with regard to overtime, you would not consider that overtime was proper?

A. For instance, if I were representing the underwriters direct on a case, not watching a case on behalf of them but actually handling a case for them, I would suggest overtime.

Q. If you did not suggest it, and overtime was worked, then representing the underwriters, you would in the end object to [210] it?

A. No, not necessarily. The underwriters only pay straight time.

(Deposition of Joseph Blackett.)

Q. They only pay straight time?

A. They only pay straight time.

Q. And you understand this really to be a defense for an underwriter's job. I will put it this way: That this was an underwriter's job.

A. I was there watching the case, I don't know who was liable or anything.

Mr. GRIFFITHS.—That is immaterial as between you and us, Mr. Frank, and I object to the question.

Mr. FRANK.—What is that?

Mr. GRIFFITHS.—As to whether he understood it to be an underwriter's job, or not. You are talking about your claim against the San Francisco & Portland Steamship Company now.

Mr. FRANK.—I understand that, but in order to get at the true facts of this matter, the defense is a defense by the underwriters.

Mr. GRIFFITHS.—That is absolutely immaterial.

Mr. FRANK.—It would be immaterial except for the testimony of this witness and the facts of this case; in other words, I am very frank to say—

Mr. GRIFFITHS.—The underwriters cannot defend on the ground that you employ overtime; your claim is against the San Francisco & Portland Steamship Company.

Mr. FRANK.—True, it is, but if I had taken overtime without an agreement to that effect—and this is my position—the underwriters, and therefore, the San Francisco & Portland Steamship

(Deposition of Joseph Blackett.)

Company, who are only standing between us and the underwriters, would have objected to it if they had found it to their interest to do so.

Mr. GRIFFITHS.—They certainly would not have objected to it if you had a heavy demurrage claim.

Mr. FRANK.—Well, that is all right, that is an admission; that is, if it paid them to object to it they would have objected to it, and if it did not pay them they would not have objected.

Mr. GRIFFITHS.—Nothing of the kind.

Mr. FRANK.—That is my position.

Q. You are Lloyd's agent, are you not?

A. Lloyd's surveyor, [211] surveyor to Lloyd's Register.

Q. And that is an underwriter's organization, is it not? A. It is a classification organization.

Q. Did you have anything to do with the dry-docking of the vessel? A. In which way?

Q. You ordered her placed in the drydock, did you?

A. Recommendations were made for drydocking, yes.

Q. Did you make the suggestion that she should work overtime in the drydock?

A. No, I made no suggestion whatever in regard to anything except the repairs of the vessel.

Q. Do you know why she worked overtime in the drydock? A. I presume to save drydocking.

Q. Well, you don't know? A. I don't know.

(Deposition of Joseph Blackett.)

Q. And you say you made no suggestions regarding the time that she be there?

A. No; my duties were to survey the damage and make recommendations on the repairs and to see that there was nothing else done in these repairs other than the actual damage work.

Q. That is your construction of what your duties were; you received no instructions to that effect, did you?

A. In the dozens of cases we have handled of a similar nature, we assume that in this case that was so.

Q. You received no special instructions?

A. No special instructions, except to act without prejudice.

Q. And you were there regularly, watching the repairs as they were going along, and Captain Brym, as the surveyor representing the libellant, and you and Mr. Evers representing the respondent, consulted as between one another at the time, did you not?

A. We watched the case as the repairs were being carried out and discussed it in various ways.

Q. And your directions were full, were they not?

Mr. GRIFFITHS.—What directions do you mean?

Mr. FRANK.—Any directions that were made in the matter.

A. The directions that were made were laid out in the list of work which was carried out. [212]

(Deposition of Joseph Blackett.)

Q. And in the performance of the work you watched it to see that it was carried out in accordance of your understanding of what was desired?

A. Yes.

Q. And consulted with these people during the time to see that it was, did you not?

A. I cannot get quite your "consulting," Mr. Frank.

Q. Well, you were there and talked it over every day, whether it was being done in the right way, or the wrong way, and things of that sort?

A. Yes, it was carried out as per instructions in the first place. I don't know whether there was any discussion about anything, or not; I don't know whether any discussion about anything else came up, except possibly with regard to one or two plates.

Q. But, whatever it was.

A. Yes, whatever it was, I suppose so.

Q. If it was one or two plates, whatever it was, you directed it? A. Yes, that is the idea.

Q. And your ideas were fully carried out?

A. Yes, absolutely.

Redirect Examination.

Mr. GRIFFITHS.—Q. In brief, you were there to see that the repairs required by the collision were done, and nothing else: Is that it?

A. Yes, that is it.

Mr. FRANK.—I object to that on the ground that that is a mere conclusion. His authority has

(Deposition of Joseph Blackett.)

already been shown. The contract, between us determines the matter.

Mr. GRIFFITHS.—Yes, except that you have asked all these general questions about consulting and directing, without specifying the line you had in mind about the consultation; I do not want anything to come in by implication that is not in by clear questions.

Q. Was there any effort, so far as you could discern, to expedite this work on the part of the owners or their representatives there, to hurry it along?

A. I did not notice any. [213]

Q. Was the "Beaver" being repaired after the collision, also?

A. She was repaired after the collision, yes.

Q. Do you happen to know whether overtime was used in connection with her repairs?

A. Overtime was worked, yes.

Mr. FRANK.—I object to that; it is utterly immaterial whether there was, or not.

Mr. GRIFFITHS.—It shows that where a vessel is urgently needed they use overtime.

Mr. FRANK.—It doesn't show anything of the kind; it simply shows an arrangement made with reference to a particular case.

Mr. GRIFFITHS.—Q. As I understand it, Mr. Blackett, where you work what you call the double shift, you do not get this reduction in efficiency to which Mr. Frank referred—to the same extent, at any rate?

(Deposition of Joseph Blackett.)

A. Not to the same extent; you do not get the amount of work at night-time that you do in the day.

Q. Now, theoretically, with the double shift, you should save half the time.

A. You should save half the time.

Q. And when you state one-third, you state it that way because you are making a conservative and safe estimate: Is that correct?

A. That is absolutely correct.

Q. And the chances are you would save more than one-third?

A. It is possible you would save more; it all depends on how the people work.

Mr. FRANK.—Q. It is possible you would save less?

A. I do not think so; the men come in fresh; they are not tired; but being at night, it is possible a little soldiering might occur because the men are not in view all the time.

Mr. GRIFFITHS.—Q. You have been asked, in giving your opinion as to what time would be saved, to put it on an absolutely safe and conservative basis, have you not?

A. You say I have been asked?

Q. Yes; when I asked you how much time could be saved, I told you, did I not, that I wanted an absolutely conservative estimate, [214] with no stretching? A. Yes, you did.

Mr. FRANK.—That is immaterial, what you told him; we are after the fact.

(Deposition of Joseph Blackett.)

Mr. GRIFFITHS.—Q. What is your opinion as to the overhauling of those engines, as to whether there was any need of it on account of the collision?

A. If we had any idea that it was necessary on account of the collision, we would have made the recommendation for it.

Recross-examination.

Mr. FRANK.—Q. You say there was no effort made to expedite; there was no delay, was there, it was done diligently, wasn't it?

A. The work went along—in my opinion it could have been done quicker.

Q. You mean the day work?

A. By working this overtime.

Q. But the work that was done was done diligently and up to the capacity of the contractor at that time? We had no control over it, in other words. A. No.

Mr. GRIFFITHS.—There was no contractor, was there?

Mr. FRANK.—It was a time and material job.

Q. The libelant had no control over that?

A. No. The thing went along in the ordinary day's work.

Mr. GRIFFITHS.—Q. Any effort made to hurry them up at all as the work went along, that you observed?

A. Well, if there had been any effort made I guess overtime would have been worked.

Deposition of Frank H. Evers, for Claimant.

FRANK H. EVERS, called for the claimant,
sworn.

Mr. GRIFFITHS.—Q. Mr. Evers, will you tell us what your address is, your business address?

A. The Fife Building, San Francisco.

Q. What is your business?

A. Marine surveyor.

Q. Have you any connection with the American Bureau of Shipping? A. Yes. [215]

Q. What connection?

A. The agent and surveyor for them.

Q. How long have you been a marine surveyor? I guess Mr. Frank won't object to your qualifications.

Mr. FRANK.—No, I will not object.

Mr. GRIFFITHS.—It is stipulated, then, that he is qualified.

Q. Did you have any relation to the repair work on the steamer or motor ship "Bayard," after her collision with the "Beaver," in the latter part of last August?

A. Yes, I was one of the surveyors on the job.

Q. Were you there during the repairs?

A. Yes.

Q. In what capacity were you there?

A. I was there representing the Portland Steamship Company.

Q. The San Francisco & Portland Steamship Company, the owners of the "Beaver"?

(Deposition of Frank H. Evers.)

A. Yes, the owners of the "Beaver."

Q. Were you there a great deal of the time during the repairs?

A. I think excepting Sunday I was there daily.

Q. Was there any overtime worked during those repairs? A. Yes, on the drydock.

Q. How much would that be, how many days was she on the drydock?

A. To the best of my knowledge there were two nights they worked on the drydock.

Q. Was any overtime worked during the other repairs? A. Not to my knowledge.

Q. Will you give us your opinion as to the time which could have been saved by the employment of double shift on that labor job?

A. Speaking conservatively, about one-third of the time.

Q. And how much would that have increased the expense per day?

A. You see, you work an eight shift and it would increase it just one day's pay each night; that would be the bonus time, one day's pay.

Q. Was any work done upon the "Bayard" other than that necessitated by the collision, other than that required on account of the collision.

A. They did a lot of work on the engines, of course. [216]

Q. What work did they do on the engines?

A. They gave them an overhauling.

Q. Was that overhauling required by the collision?

(Deposition of Frank H. Evers.)

A. We recommended nothing because of the collision on the engines.

Q. Did you see what the condition of the engines was as they were overhauled?

A. I saw a lot of it come out.

Q. What was the condition?

A. Very dirty, indeed, needed overhauling for dirt.

Q. Needed overhauling for dirt?

A. Yes, an accumulation of dirt.

Q. I suppose the engines were in better shape in that respect after the overhauling than they were before?

A. Well I didn't see them run afterwards.

Q. You didn't see them run afterwards?

A. No.

Q. Was any trial trip of this ship required because of the collision, after her repairs?

A. None that I know of.

Q. Were you attendant upon the repairing of the "Beaver" also at this time?

A. Every day on the "Beaver."

Q. Was overtime used on the "Beaver"?

Mr. FRANK.—That is immaterial and we object to it.

A. We worked night and day on the "Beaver" whenever it was necessary and after we were all consulted to do so.

Mr. GRIFFITHS.—Q. You were classifying the "Beaver"?

(Deposition of Frank H. Evers.)

A. The "Beaver" is classified in the American Bureau of shipping.

Q. Was any effort made, so far as you could discern, on the part of the owners or the representatives of the owners of the "Bayard" to speed up the repairs?

A. Well, they never asked to work overtime, if that is what you allude to; they never asked it.

Cross-examination.

Mr. FRANK.—Q. And you never suggested it?

A. No, sir, I never suggested it; I am not supposed to suggest it. [217]

Q. In the case of the "Beaver," you say you had consultations as to whether or not overtime should be used?

A. I wish to correct myself a little there; I consulted with the owners of the vessels and they said they wanted to work overtime on it; then I asked the Underwriters' surveyor, and he made me show him how I could save the time, and I showed him how by working overtime we could save the time, and then we went along with it so as to get the vessel out.

Q. So that without the consent of the Underwriters you would not have been able to use overtime on the "Beaver," either?

A. I would have done it if the owners would have insisted on it if they saw they could save money they would not have minded them; we do it in hundreds of cases.

(Deposition of Frank H. Evers.)

Q. That is, if the owners had insisted upon it you would have done it and the owners would have had to take their chances for the overtime?

A. Yes, and that would have been settled by the Average Adjusters at the finish up of the business; it would be my argument against his.

Q. In other words, they would take the chances of the Underwriters accepting it if it turned out to their advantage, but if it turned out to their disadvantage they would not accept it; is that right?

A. Yes, the underwriters would have objected to paying it.

Q. Because straight time is understood to be worked?

A. It is what the underwriters guarantee to pay.

Q. That is all?

A. Unless the saving can be shown by the working overtime, or for some other cause, or the owners say it is to their benefit and they can save money on freight or otherwise by getting the work done and putting the vessel into operation.

Q. That simply amounts to the fact that there is a special arrangement between the parties; if the parties agree that they shall go on and do work on time and material basis, it is understood that it is straight time. [218]

Mr. GRIFFITHS.—I want that question to specify what you mean by parties, because these questions as between the insurers that you are referring to are all questions that do not concern anyone except the owners of the vessel and the insurers.

(Deposition of Frank H. Evers.)

Your duty is to minimize your loss. You are not dealing directly with the insurers at all.

Mr. FRANK.—I must insist, Mr. Griffiths, that I am entitled to that in this case because, as a matter of fact, in this settlement I am dealing with the insurers, they are making the defense.

Mr. GRIFFITHS.—That is immaterial and incompetent.

Mr. FRANK.—But it is a fact.

Mr. GRIFFITHS.—It is absolutely immaterial and incompetent; it is your duty to minimize your loss.

Mr. FRANK.—They are the ones who are making the objection about overtime, and not the owners.

Mr. GRIFFITHS.—I am attorney for the owners absolutely, now.

Mr. FRANK.—I understand that, but I want to get the matter straight in the record. The Underwriters are making a defense in the name of the owners.

Mr. GRIFFITHS.—They are not doing anything of the kind just now. It is the duty of the insurers and the owners to go ahead and settle the case and then consult with the Underwriters. That is not a matter that you are entitled to inquire into in this case.

Mr. FRANK.—Yes, it is, under the circumstances of the case, and that is the reason I am insisting upon it. Will you answer the question, Mr. Evers?

(Question read by the reporter.)

(Deposition of Frank H. Evers.)

A. Unless the owners want to work overtime.

Q. If they have such an agreement—unless they have a special agreement to work overtime it would be straight time, would it not?

A. Yes, unless the owners insist upon working on their own and paying for the extra themselves.
[219]

Q. And paying the extra themselves?

A. Sure.

Mr. GRIFFITHS.—Q. And by arrangement between the parties, you mean between the insurers and the owners, and when you say, unless they have an agreement, you mean between the owners and the insurers?

A. I mean that the owners can take their own initiative and work it if they want to.

Q. And take their chances on getting it paid?

A. Well, if they find out they will make money by it they will pay for it.

Mr. FRANK.—Q. If any two parties agree that it shall be done on time and material basis at going rates, it is understood by that agreement that it is straight time; if one man agrees to pay for certain repairs to be done on time and material basis at going rates, it is understood, unless there is some special arrangement, that that is straight time?

A. That is true.

Redirect Examination.

Mr. GRIFFITHS.—Q. There are going rates for regular time and going rates for overtime, aren't there?

(Deposition of Frank H. Evers.)

A. Yes, it is single time for day time and double time for night time.

Q. So that going rates do not necessarily mean straight time or overtime, they may mean either, the going rates for over time or going rates for regular time.

A. It is understood you pay a man so much a day and if he works overtime you pay him double time; that is understood at all times.

Q. And those are the going rates either way.

Mr. FRANK.—You need not argue it with your witness.

A. Well, they are the understood rates.

Recross-examination.

Mr. FRANK.—Q. Unless something is said about overtime, it means straight time, doesn't it?

A. Unless the yard is instructed to work overtime they do not work; they work just the straight time.

Q. And if I make an agreement with you that I am going to make the repairs—and I am not the Yard—you and I have a controversy [220] as to which one will pay for it and I make an agreement with you, in which you agree to pay for the repairs, if I have it done on time and material basis at going rates, you understand that that is straight time, do you not?

A. I understand that that is straight time.

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Thursday, December 19, 1918, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the office of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Joseph Blackett and Frank H. Evers, witnesses called on behalf of the Claimant in the cause entitled in the caption hereof; and Nathan H. Frank, Esq. appeared as proctor for the libelant, and F. P. Griffiths, Esq. appeared as proctor for the claimant, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by their depositions hereto annexed.

I further certify that the depositions were then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the depositions to the witnesses and the signing thereof were expressly waived. [221] And I do further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern

District of California, the court for which the same were taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 4th day of Febr'y. 1919.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Feb. 4, 1919. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [222]

[Title of Court and Cause.]

No. 16303.

(Deposition of L. K. Silversen, for Libelant.)

BE IT REMEMBERED: That on Thursday, December 19, 1918, pursuant to stipulation of counsel hereunto annexed, at the office of Nathan H. Frank Esq., in the Merchants Exchange Building, in the city and county of San Francisco, state of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., L. K. Silversen, a witness called on behalf of the libelant.

Nathan H. Frank, Esq., appeared as proctor for the libelant, and F. P. Griffiths, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the offices of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the city and county of San Francisco, state [223] of California, on Thursday, December 19, 1918, before Francis Krull, a United States Commissioner for the Northern District of California and in shorthand by Charles R. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [224]

(Deposition of L. K. Silversen.)

L. K. SILVERSEN, called for the libellant, sworn.

Mr. FRANK.—Q. Mr. Silversen, what is your business?

A. Sales Manager for the Bethlehem Shipbuilding Corporation.

Q. That is the Union Iron Works, is it not?

A. Yes.

Q. At the time that the "Bayard" was being repaired down there, what was your business?

A. I was soliciting repair work and receiving the instructions or directions from the man that had the repair work done, as well as in a general way keeping in touch with the work while the work was being carried out; in short, to see that the customer was satisfied.

Q. In other words, you were representing, in the matter of this repair, the Union Iron Works?

A. Yes, sir.

Q. And in that respect you were down there watching the repairs and seeing that they were done as it was agreed between the parties?

A. Not continually, I was from time to time.

Q. Well, you were supervising and you superintended?

A. I should not say that I was supervising or superintending the repairs personally; I had other people doing that in the different departments; I would go down and talk to those people, from time to time.

(Deposition of L. K. Silversen.)

Q. In other words, you are the head man, you were the head supervisor—

Mr. GRIFFITHS.—I object to leading the witness; let us get from him what the situation was.

Mr. FRANK.—I don't want to lead him. It is only a matter of saving time, it is simply to place the witness in his position; that is all. I am perfectly satisfied in his answer, we will not get into any controversy about it.

Q. In that connection you were of course familiar with the conditions at the yards, the work to be done and— [225]

Mr. GRIFFITHS.—I object to that as leading, ask him if he was familiar with it.

Mr. FRANK.—Q. Were you familiar with the condition of the yard, the work to be done, the men available, and things of that sort? A. Yes.

Q. What, if anything, can you say concerning the conditions down there—

A. Excuse me a minute, can I explain to you more thoroughly what my position was?

Q. Surely, explain the whole thing.

Q. The yard is equipped with a man who is superintendent of the yard; there are again superintendents of the different departments; there is a superintendent of the machine ship, there is a superintendent of the hull department, who looks after all the hull repairs; I consult with all those superintendents; I would receive the instructions from a man who was having the work done in place of having him go to all the different foremen or

(Deposition of L. K. Silversen.)

superintendents throughout the yard, he prefers to deal with one man and he deals with me, and then I issue the instructions to the rest of the men around the yard.

Q. And you see that they are carried out?

A. Not always, many times if the work is not carried out in accordance with instructions, some representative of the owners may see it before I know of it and they will come and complain to me about it, and then I will go to the superintendent of that department and then I will go down and look at it myself to ascertain if it is really so.

Q. What, if anything, can you say concerning the conditions at the yard with respect to men available for this work, for an extra shift at night time?

A. I know that we were very busy at the time, and we had not sufficient men for a double shift, in the first place; in the second place, it is very difficult to get [226] the men to work a double shift on a straight eight-hour basis; in cases where you can get the men to work a double shift, they insist upon working eleven hours.

Q. At any rate, you did not have the men available, I understand, for a double shift? A. No.

Q. In an ordinary agreement for repairs on a time and material basis, where nothing is said about working overtime, state whether or not that includes overtime, or whether it means straight time, according to the understanding in the business, and without special instructions to work overtime?

(Deposition of L. K. Silversen.)

A. We never work overtime, unless we are specially directed to do so.

Q. In case of contract or an agreement to work on a time and material basis, and nothing said about overtime, what would you understand that to mean between the parties?

A. I would understand that to mean we would not work any overtime unless we were directed to do so.

Q. Where men work overtime on a single shift, state whether or not that doubles or trebles the wage expense?

A. I think it would more nearly treble it.

Mr. GRIFFITHS.—Q. More nearly treble it, you say?

A. Yes; if I say positively that it would treble it, you would then ask me to show you why, and I have not any definite figures to prove it would treble it, except from my general knowledge of the business.

Q. Where a man works, say, eight hours, and then works overtime, what wage does he get for the overtime?

A. He gets double the amount of his pay during the day time, during the first eight hours.

Q. And what about his efficiency?

A. It is reduced considerably. [227]

Cross-examination.

Mr. GRIFFITHS.—Q. Was the "Beaver" repaired at the Union Iron Works? A. Yes, sir.

Q. And they worked overtime on her, did they not? A. Yes.

(Deposition of L. K. Silversen.)

Q. Why was that, do you know?

A. We received instructions from the owners to work overtime.

Q. They said they wanted it?

A. They said the ship had to sail on a certain date, on a trip to Portland, and in order to finish the ship so that she could go to sea on that date and to complete all the repairs, it was absolutely necessary to work overtime.

Q. What did you use? Did you use a double shift there, do you recall?

A. I don't recall exactly, but I think it was all straight work; by that I mean the men worked straight through as long as they could.

Q. Where they worked straight through as long as they could, you say their efficiency was reduced?

A. Yes.

Q. But still you save time, don't you?

A. Oh, yes.

Q. There is no question about that, at all?

A. Oh, no.

Q. How much do you think you save, do you cut off as much as one-third?

A. Oh, yes, it would cut that off all right.

Q. It would cut off one-third easily, even if it worked straight through?

A. Yes, if you work men until, say, about half past eleven every night. In a case like the "Beaver," where they were in a hurry to get the vessel out, it is possible sometimes to arrange that one certain set of men, say, for instance, men cutting

(Deposition of L. K. Silversen.)

out rivets, could work until twelve or one o'clock in the morning and thereby get done a lot of work that can be done the next day for another set of men, for another shift of men.

Q. All I want is simply to get from you what the actual situation is. Now, as I understand it, it is this: If a man really wants [228] a vessel, badly, if she is valuable, you can arrange to give him overtime, can't you, either by straight-through time, or by double shifts, if it really is an urgent case?

A. Usually, yes.

Q. Did the owners, or the owners' representatives, ever suggest to you during the repairs on the "Bayard" that there was any hurry to get the "Bayard" out?

A. They wanted to get the "Bayard" out as quick as they could.

Q. Did they say that?

A. I think they made the request that they wanted to get the "Bayard" to sea not later than the 6th of December, as far as I can remember, but we were not able to do it.

Q. They did not request you to use any overtime, did they? A. No, sir.

Q. Where there is an agreement between parties to repair a vessel on the basis of time and materials at going rates, that does not prevent you from using overtime if the parties want the overtime, does it?

A. No, it does not prevent us from using overtime, but we have to receive special instructions to

(Deposition of L. K. Silversen.)

work overtime. But we have to receive special instructions to work overtime.

Q. And when you receive the special instructions under those circumstances, the going rates would mean the going rates if they used overtime, would it not?

A. That is what it would mean, yes.

Redirect Examination.

Mr. FRANK.—Q. They were proceeding with all the diligence they could, were they not? A. Yes.

Q. Except that they did not use overtime?

A. They did not use overtime.

Q. You say you can usually arrange to give men for overtime, but in this particular case you said you could not do it? [229]

A. We were not asked to do it.

Q. You said you could not put on two shifts?

A. We could not put on two shifts if they had wanted it.

A. And as I understand it, they told you they were anxious to get the ship not later than December 6th, and you were unable to get it to them even by that time?

A. I should probably not be so positive regarding the date, but I know that it was more than a week sooner than the vessel was delivered; we tried all we could to do it, but we were not able to make it.

Q. In other words, they were anxious to get the vessel as soon as they could? A. Yes, sir.

Cross-examination.

Mr. GRIFFITHS.—Q. Who told you they were

(Deposition of L. K. Silversen.)

anxious to get her out in a hurry, who actually told you that? A. Captain Brym.

Q. They overhauled the engines on the "Bayard" while she was there didn't they? A. Yes.

Q. And there was some miscellaneous work done for the owner's account, was there not? A. Yes.

Q. Do you recall how much that other work amounted to?

A. In which way, in money?

Q. What was the other work? Tell us what was done with respect to overhauling the engines?

A. They opened up all the cylinders for examination and they fitted on new piston rings; I think they refitted the cross-head brasses, just took them down and looked them all over; the crank pin brasses, as well, were also taken down and examined; the auxiliary engines had new foundations installed under them.

Q. Anything else?

A. There were a number of minor jobs; those were the principal things.

Q. Were the engines cleaned up thoroughly?

A. Naturally, in a [230] case like that, where there is so much work done, there is a great deal of dirt generated, and that naturally had to be cleaned up.

Q. They naturally took advantage of the chance to clean the engines out and put them in good order; is that a fair statement?

A. What do you mean, the interior portion, or the exterior portion, of the engine-room, or what?

(Deposition of L. K. Silversen.)

Q. Both.

A. The exterior of the engine-room, down around the engines, was cleaned up.

Q. How about the engine-room?

A. Naturally, when you remove a piston for examination there is always more or less dirt that has to be cleaned up.

Q. Aside from the engines, was there any work done on the vessel for the owner's account?

A. I spoke of the auxiliary engines.

Q. You said you put new foundations under those.

A. There was miscellaneous pipe work and things of that nature; I don't remember exactly.

Q. That is to say, work altogether apart from the work required on account of the collision; there is no question about that at all, is there?

A. Work that was charged to the owner's account.

Q. Can you tell approximately what the amount of that additional work would be in term of money, say?

Mr. FRANK.—We object to that, because we are not making any claims for that in the damages.

Mr. GRIFFITHS.—It is material in another connection.

Mr. FRANK.—In what connection?

Mr. GRIFFITHS.—Q. Can you answer that question?

Mr. FRANK.—I would like to know the materiality of it.

(Deposition of L. K. Silversen.)

A. I don't remember what it amounted to in money.

Mr. GRIFFITHS.—Q. Not even in round figures?

A. No, I don't remember exactly. The owner's bill was around \$20,000, [231] but I might be mistaken about that.

Q. You think it was about \$20,000?

A. Something like that.

Redirect Examination.

Mr. FRANK.—Q. That work did not interfere with the work that was being done under the recommendations of those surveyors, did it?

A. No, sir.

Q. Was not the most of it being done by their own men aboard the vessel, their own engineers and crew?

A. Their own engineers and crew were working all the time, but I don't know that I should say that the most of it was done by them; I don't think I could say the most of it was done by them.

Q. Well, was half of it done by them? Was a very material part of it done by them?

A. A material part was done by them; for the overhauling of the engines they got a certain number of men from us, I think four or six men, that worked according to the engineer's instructions on the engines, and we kept no special account of what those men were doing, they did whatever the engineer told them to do. Those men worked together

(Deposition of L. K. Silversen.)

with the engineers on the ship, assisted them in doing whatever they were doing.

Q. That was the extent of the man power that was given by you? A. To the engineers, yes.

Q. And the rest was material: Is that right?

A. Oh, no; in connection with the new foundations under the auxiliary motors there was a considerable amount of labor used; it was outside of anything that was done on the engine.

Q. The auxiliary motors were entirely separate and apart, that had nothing to do with the main engines at all?

A. No, nothing to do with the main engines.

Q. That was a side job?

A. That was aside from the main engines, yes.

[232]

Q. Did they do anything with reference to examining the shafts for their alignment?

A. My recollection at the present time is that the survey, or the recommendation of the surveyor called for an exterior examination of the engine and its foundations, as well as the alignment of the shaft, and that was done.

Q. And that was done because of the likelihood of injury due to the shock from the collision, wasn't it?

A. I think that is the reason that they put forth for it, yes.

Mr. GRIFFITHS.—Q. Whom do you mean by "they"?

(Deposition of L. K. Silversen.)

A. The surveyors. The surveyers collectively wrote up a specification or work list that we were to carry out, and we carried out the work that was enumerated on that work list.

Mr. GRIFFITHS.—Have you that work list, Mr. Frank?

Mr. FRANK.—I must have it.

Mr. GRIFFITHS.—Don't you think it would be a good idea to put that in so there will be no question about what was called for?

Mr. FRANK.—I don't think there is any question about it, but I have no objection to your having the work list. I will provide it to you later.

Mr. GRIFFITHS.—And it is stipulated that after you give it to me, it may go in?

Mr. FRANK.—Subject to my objection as to its materiality.

Mr. GRIFFITHS.—Surely. There have been several questions asked him about the specifications.

Mr. FRANK.—Q. And also shock of that sort will be likely to disarrange or injure the pipes and things of that sort, would it not?

A. Mr. Frank, I don't like to answer that question; I am not classed as an expert that is supposed to give testimony regarding these things. [233]

Q. I simply want to know from your own experience; if you have not any experience that warrant it you can say so; if you have experience that warrant it, I want to know what your experience is about those things. I will change the question.

(Deposition of L. K. Silversen.)

however. After a collision of that kind and you know from the damage what the nature of the collision was, would you consider it a prudent thing on the part of a ship owner to take his ship out without satisfying himself that the engines and connections have not been injured by the shock?

A. No, I think the owner is justified in making all possible examination to see that nothing has happened, because once he goes to sea things might give out that they do not anticipate, and he might have considerable trouble.

Recross-examination.

Mr. GRIFFITHS.—Q. You would, however, on a question like that, as I understand you, defer to the judgment of the surveyor rather than to your own judgment, would you not? Do you understand what I mean? A. We take orders.

Q. You take orders? A. We take orders.

Q. And on a question of whether such and such an examination of the engines was needed you would be guided rather by the judgment of the surveyors than by your own personal judgment, as I understand it?

A. It is entirely up to the surveyors; if the surveyors recommend that the engine be examined, we examine it; whether we think it is necessary or that it is not necessary is immaterial, we do as the surveyor tells us to do. We venture no opinion except when we are asked.

Mr. FRANK.—Q. That is, you are speaking of

(Deposition of L. K. Silversen.)

the Union Iron Works, now, and not the owner?

A. I am speaking of the Union Iron Works.

Mr. GRIFFITH.—He has to speak of the Union Iron Works. [234]

The WITNESS.—I have no connection with the owners.

Mr. FRANK.—Therefore your question is immaterial.

Mr. GRIFFITHS.—I am asking him simply if he would defer to the judgment of the surveyors rather than take his personal judgment.

The WITNESS.—I understood Mr. Frank to ask me my personal opinion. That is why I answered; otherwise I should not have answered.

Mr. FRANK.—Q. And in this other case you are speaking entirely of what the Union Iron Works would do in making the repairs? A. Yes.

Mr. GRIFFITHS.—A. Now, I say that as to your personal opinion, you told Mr. Frank a little while ago that you would not care to answer a question as to whether such and such work could be done upon the ground that that was not a matter upon which you pretended to be a specialist; now I say to you that, as between your personal opinion and the opinion of the surveyors, you would prefer the opinion of the surveyors on a point like that: Isn't that so?

Mr. FRANK.—It is utterly immaterial what he prefers; we have a right to our own judgment.

A. In my experience in making repairs to steam-

(Deposition of L. K. Silversen.)

ers, on the machinery as well as to the hull, I have seldom found that the opinion of the surveyor was any different from my own.

Mr. GRIFFITHS.—Q. You usually agree with the surveyor? A. Yes.

Mr. GRIFFITHS.—That is all. I would like to have those specifications. [235]

Further Redirect Examination.

Mr. FRANK.—Q. You say you seldom found it, but there are cases where you consider your own opinion preferable to that of the surveyor?

A. Well, it is usually the same.

Q. Usually, yes, but there are cases in which you do not consider it proper, in your opinion, to defer to the surveyors?

A. In that case I don't voice them.

Q. Counsel is trying to get you to say—

Mr. GRIFFITHS.—I object to any suggestion as to what I am trying to get him to say; I am asking him what the situation is. It is perfectly clear what he thinks about this.

Mr. FRANK.—I want the witness to understand the question, and I want to get a fair reply covering the fact.

Mr. GRIFFITHS.—Yes, we want what he thinks.

Mr. FRANK.—In other words, there are occasions that while you literally agree with the surveyors, there are occasions when you do not agree with them. That is the question.

A. Is this directed to me personally, or as a

(Deposition of L. K. Silversen.)

representative of the Union Iron Works?

Q. To you personally. A. Yes.

Mr. GRIFFITHS.—Q. Did you have any difference with the surveyors on this job at all?

A. No, sir.

Mr. FRANK.—Q. You were not called upon; you were acting in this instance as a representative of the Union Iron Works and taking orders: Is that right? A. That is right.

Mr. GRIFFITHS.—Now, let us get the matter of the specifications cleared up; you have those, have you?

Mr. FRANK.—I will get them, Mr. Griffiths. I don't seem to find them here now.

Mr. GRIFFITHS.—At any rate, it is stipulated that the specifications may go in, when you find them. [236]

Mr. FRANK.—I will stipulate that you can offer the specifications and that I object to their introduction as immaterial. I will give them to you. With that stipulation they can be attached to the deposition.

Mr. GRIFFITHS.—And if we offer them they can be marked claimant's exhibit, whatever the name is. [237]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Thursday, December 19, 1918, before

me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of Nathan H. Frank, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared L. K. Silversen, a witness called on behalf of the Libelant in the cause entitled in the caption hereof; and Nathan H. Frank, Esq., appeared as proctor for the Libelant, and F. P. Griffiths, Esq., appeared as proctor for the Respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named nor in any way interested

in the event of the cause named in the said caption.
[238]

IN WITNESS WHEREOF, I have hereunto set
my hand in my office aforesaid this 4th day of
Febry., 1919.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Feb. 4, 1919. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [239]

[Title of Court and Cause.]

No. 16303.

**(Opinion and Order to Enter Decree in Favor of
Libelant, etc.)**

NATHAN H. FRANK, Esq., and IRVING H.
FRANK, Esq., Proctors for Libelant.

FARNHAM P. GRIFFITHS, Esq., and McCUT-
CHEN, WILLARD, MANNON & GREENE,
Proctors for Respondent and Claimant.

The "Bayard" and the "Beaver" collided in the
harbor of San Francisco on November 3d, 1917.
The Respondent "Beaver" admits liability for the
collision and the only question left for determina-
tion is the question of damages. The cost of re-
pairs to the "Bayard" must, of course, be allowed.
The fact that other repairs, not necessitated by the

collision, were made, but which did not delay the completion of the repairs so necessitated is, as I view the case, immaterial. The period covered by the making of the repairs was forty-eight days. It would, however, in any event have taken at least two weeks to have arranged for the acceptance [240] by the owners, of a charter satisfactory to the Shipping Board. The "Brazil," a ship of the same general type as the "Bayard," entered San Francisco harbor on November 13th, 1917, ten days after the collision, and remained there idle until the middle of January, 1918. During all of this time Olson & Co., of Norway, were the managing owners of both the "Bayard" and the "Brazil." Moore & Co. had offered a lump sum of \$400,000.00 as charter hire for the "Bayard" for a voyage to the Orient and return, and it is on this offer that libellant bases its claim for the amount of damages sought as demurrage. But it is quite clear that a charter at that rate would not have been approved by the Shipping Board, which had fixed a basic rate of forty-five shillings per deadweight ton per month. While the "Bayard" was laid up for repairs the "Brazil" was also idle in port, although there was a great demand for ships and she could have sailed at any time at the rates fixed by the Board. The fact that she did not do so leads me to the belief that the owners were unwilling to accept those rates, and preferred to wait in the hope or expectation of securing a more profitable figure. They were in fact unwilling to accede to the regu-

lations of the Shipping Board in regard to rates, and seemingly desired to take their chances of getting higher rates later by leaving the ship idle during this period. If it were not for the voluntary idleness of the "Brazil" I would allow demurrage to the "Bayard" at the rate of forty-five shillings per deadweight ton per month for the period of thirty-four days. But as the owners preferred to leave the "Brazil" idle when she could have been chartered at those rates, it is reasonable to conclude that they would not have accepted them for the "Bayard" had she been in commission. A higher rate would not have been approved by the Board. [241]

A decree will be entered in favor of libelant for the amount expended in making the repairs rendered necessary by the collision. If the parties do not agree as to this amount, the cause will be referred to the Commissioner to ascertain and report the same.

September 23d, 1921.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sep. 23, 1921. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [242]

[Title of Court and Cause.]

No. 16303.

Interlocutory Decree.

This cause having been duly heard on the plead-

ings and proofs, and having been argued and submitted by the proctors for the respective parties, and respondent vessel "Beaver" and her claimant, San Francisco & Portland Steamship Company, having admitted liability for the collision and for the physical damages to the "Bayard" caused by the collision, and having contested libelant's claim for damages for demurrage, and due deliberation having been had and the Court having filed its opinion herein finding and holding that the libelant should recover the amount expended in making the repairs to the "Bayard" rendered necessary by the collision but no damages for demurrage for the reasons and in accordance with the findings set forth in said opinion, and having ordered that a decree be entered accordingly with reference to the United States Commissioner to ascertain [243] and report the said physical damages;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that libelant, Aktieselskapet Bonheur, a corporation, do have and recover from claimant, San Francisco & Portland Steamship Company, a corporation, the amount expended in making the repairs to the "Bayard" rendered necessary by the collision, but no damages for demurrage or detention.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cause be, and it is hereby, referred to United States Commissioner Francis Krull to ascertain and report the aforesaid physical damages.

Oct. 7th, 1921.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Oct. 7, 1921. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk.

Entered in Vol. 11 Judg. and Decrees, at page
294. [244]

[Title of Court and Cause.]

No. 16303.

**Stipulation Submitting to the Determination of
the Court Certain Disputed Items of Damage.**

The Court having under date October 7, 1921,
made and entered the Interlocutory Decree herein
as follows:

“This cause having been duly heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and respondent vessel “Beaver” and her claimant, San Francisco & Portland Steamship Company, having admitted liability for the collision and for the physical damages to the “Bayard” caused by the collision, and having contested libelant’s claim for damages for demurrage, and due deliberation having been had and the Court having filed its opinion herein finding and holding that the libelant should recover the amount expended in making the repairs to the “Bayard” rendered necessary by the collision but no damages for demurrage for

the reasons and in accordance with the findings set forth in said opinion, and having ordered that a decree be entered accordingly with reference to the United States Commissioner, to ascertain and report the said physical damages;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that libelant, Aktieselskapet Bonheur, a corporation, do have and recover from claimant, San Francisco & Portland Steamship Company, a corporation, the amount expended in making the repairs to [245] the "Bayard" rendered necessary by the collision, but no damages for demurrage or detention.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cause be, and it is hereby, referred to United States Commissioner Francis Krull to ascertain and report the aforesaid physical damages."

And said hearing having, in the absence from this jurisdiction of the said United States Commissioner Francis Krull, been noticed before United States Commissioner T. E. Hayden for the 19th day of December, 1921, and, with the consent of the parties, having been thereafter continued from time to time for the purpose of enabling the parties to arrive at an agreement, in whole or in part, as to the amount expended in making the repairs to the "Bayard" rendered necessary by the collision.

And the said libelant retaining and insisting upon its exception to so much of the said decree as disallows its said claim for demurrage but the parties

having now agreed, and they hereby do agree that said physical damages amount to at least \$58,096.15;

And the libelant having claimed and claiming also and in addition to said \$58,096.15, the following sums expended by it, namely:

For Watchman T. Pentland on the
“Bayard” from November 3d to De-
cember 21, 1917; 49 days at \$3.50
per day \$ 171.50

For Watchman Chas. Bergk on the
“Bayard” from November 3d to De-
cember 21, 1917; 49 days at \$3.50
per day 171.50

For 3 tons of coal for cooking while
the “Bayard” was laid up for re-
pairs at \$15.25 per ton 45.75

For wages for 30 men (members of
the crew of the “Bayard”) during
the period of repairs, November 3d
to December 21, 1917; 49 days at
\$85.00 per day 4165.00

[246]

For vitualling of said 30 men dur-
ing said period of repairs, from
November 3d to December 21, 1917;
49 days at \$30.00 per day 1470.00

Total \$6023.75

And claimant having disputed and disputing said last enumerated items and each of them; and the Interlocutory Decree making no provision respecting interest and costs;

NOW, THEREFORE, the hearing heretofore noticed before United States Commissioner Hayden and continued from time to time is, by consent of the parties and of the Court discontinued;

And the parties hereby submit to the Court the question which, if any of the aforesaid disputed items, shall be allowed in addition to the aforesaid sum of \$58,096.15, upon which the parties have agreed and hereby do agree. The items of interest and costs are further hereby reserved for the determination of the Court upon the settlement of the final decree.

Dated: March 2, 1922.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Libelant.

FARNHAM P. GRIFFITH,
McCUTCHEN, OLNEY,
WILLARD, MANNON &
GREENE,

Proctors for Claimant.

[Endorsed]: Filed Mar. 3, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [247]

[Title of Court and Cause.]

No. 16303.

(Order Fixing Amount of Final Decree.)

NATHAN H FRANK, Esq., and IRVING H. FRANK, Esq., Proctors for Libelant.

FARNHAM & GRIFFITHS, Esq., and McCUTCHE-
CHEN, OLNEY, WILLARD, MANNON &
GREENE, Proctors for Respondent and
Claimant.

A final decree will be entered herein for libelant for the sum of \$58,096.15, with interest from December 21st, 1917, at six (6%) per annum and costs of suit.

March 7th, 1922.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 7, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [248]

[Title of Court and Cause.]

No. 16303.

Final Decree.

This cause having come on regularly for trial, libelant appearing by Nathan H. Frank, Esq., and claimant and respondent appearing by Farnham P. Griffiths, Esq., and McCutchen, Olney, Willard, Mannon & Greene, and the Court having filed its opinion herein holding and deciding that libelant

should recover the amount expended by it in making repairs on the "Bayard" rendered necessary by the collision referred to in the libel on file herein, but no damages for demurrage for the reasons and in accordance with the findings set forth in said opinion;

And it further appearing that an interlocutory decree was duly and regularly made and entered herein, referring said cause to Francis Krull, United States Commissioner herein, to ascertain and report the amount of physical damage suffered by [249] libelant, and the parties hereto having waived said reference to said commissioner, and having filed a stipulation herein, agreeing that the physical damages to the "Bayard," caused by the collision referred to in said libel, is at least the sum of Fifty-eight Thousand, Ninty-six and 15/100 (58,096.15) Dollars, and libelant having claimed, in addition to said last-named sum, the sum of Six Thousand, Twenty-three and 75/100 (6,023.75) Dollars, on account of wages paid to the crew of said "Bayard" during the period of repairs to said vessel, and on account of other matters referred to in said stipulation, and the Court having filed its order herein fixing libelant's damage at the sum of Fifty-eight Thousand, Ninety-six and 15/100 (58,096.15) Dollars, and disallowing the said additional sum of Six Thousand, Twenty-three and 75/100 (6,023.75) Dollars, or any other sum;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the libelant herein Aktieselskapet Bonheur, a corpora-

tion, do have and recover from the respondent the American Steamer "Beaver," and the claimant San Francisco & Portland Steamship Company, a corporation, the sum of Fifty-eight Thousand and Ninety-six and 15/100 (58,096.15) Dollars, together with interest thereon at the rate of six per cent (6%) per annum from the 21st day of December, 1917, until paid, and costs to be hereafter taxed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that unless an appeal be taken from this decree within the time limited and prescribed by law and the rules and practices of this Court, that the stipulators for costs and value on the part of the claimant herein do cause the engagements of their stipulations to be performed, and that the claimant San Francisco & Portland Steamship Company, a corporation, do satisfy this decree, or show cause within four (4) days after the expiration of the said time to appeal, why execution should not issue against the goods, chattels, lands [250] and tenements or other real estate of the said stipulators and claimant, for the aforesaid sum of Fifty-eight Thousand and Ninety-six and 15/100 (58,096.15) Dollars, together with interest and costs to enforce the satisfaction of this decree.

Dated: This 11th day of March, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Receipt of a copy of the within decree is hereby admitted this 10th day of March, 1922.

McCUTCHEM, OLNEY, WILLARD,
MANNON & GREENE,
Proctors for Claimant.

Form O. K.

McCUTCHEM, OLNEY, WILLARD.
MANNON & GREENE.

Filed Mar. 11, 1922. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk.

Entered in Vol. 12 Judg. and Decrees, at page 75.
[251]

[Title of Court and Cause.]

No. 16303.

Notice of Appeal.

To San Francisco & Portland Steamship Company,
Claimant herein, Messrs. McCutchen, Willard,
Mannon & Greene, Proctors for said Claimant,
and to the Clerk of the United States District
Court for the Northern District of California,
Southern Division:

YOU, AND EACH OF YOU, WILL PLEASE
TAKE NOTICE that Aktieselskapet Bonheur, a
corporation, libellant in the cause above named,
hereby appeals to the United States Circuit Court
of Appeals for the Ninth Circuit from the final de-
cree of the District Court of the United States for
the Northern District of California, made and en-

tered in said cause on the 11th day of March, 1922, and for the whole thereof.

Dated, at San Francisco, California, this 17th day of April, 1922.

NATHAN H. FRANK,
IRVING H. FRANK,
Libelant's Proctors.

[Endorsed]: Receipt of a copy of the within Notice of Appeal is hereby admitted this 17th day of April, 1922.

McCUTCHEEN, OLNEY, WILLARD,
MANNON & GREENE,
Proctors for Claimant.

Filed Apr. 17, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [252]

[Title of Court and Cause.]

No. 16,303.

Assignment of Errors.

Comes now Aktieselskapet Bonheur, a Corporation, libelant in the above-entitled cause, and assigns the following errors of the above-entitled Court in said cause:

I.

The Court erred in finding that the said libelant was not entitled to demurrage for the loss of time suffered by the motorship "Bayard" by reason of the collision in said libel set forth.

II.

The Court erred in not finding that the libelant was entitled to demurrage for the loss of time of the "Bayard" at the rate per day of what her earning would be under a charter for the payment of Four Hundred Thousand Dollars (\$400,000) for a round trip from San Francisco to two points in the Philippines and return to San Francisco. [253]

III.

The Court erred in not finding that the said libelant was entitled to demurrage in the sum of at least Two Hundred Sixty-six Thousand Five Hundred Four $82/100$ (\$266,504.82) Dollars for loss of time of said "Bayard" due to the collision in said libel mentioned.

IV.

The Court erred in finding that the Shipping Board would not have approved a higher rate of freight on a charter of said vessel than forty-five shillings (45s.) per deadweight ton per month for the period of thirty-four (34) days.

V.

The Court erred in finding that the owner of the "Brazil" preferred to leave said vessel idle when she could have been chartered at those rates, to wit, forty-five shillings (45s.) per deadweight ton per month.

VI.

The Court erred in not finding that the claim of libelant for demurrage in the present case is not in anywise or at all affected by what the owners of the

“Brazil” did, or preferred to do, with said motorship “Brazil.”

VII.

The Court erred in finding that the charter of said vessel at the rate of Four Hundred Thousand Dollars (\$400,000) *Dollars* for a round trip would not have been approved by the Shipping Board.

VIII.

The Court erred in failing to allow the said libellant the sum of One Hundred and Seventy-one 50/100 Dollars (171.50) for Watchman T. Pentland on the “Bayard” from November 3 to December 21, 1917,—49 days at \$3.50 per day. [254]

IX.

The Court erred in failing to allow the said libellant One Hundred Seventy-one 50/100 (\$171.50) Dollars for Watchman Charles Bergk on the “Bayard” from November 3d to December 21, 1917,—49 days at \$3.50 per day.

X.

The Court erred in failing to allow libellant Forty-five 75/100 (45.75) Dollars for three (3) tons of coal for cooking while the “Bayard” was laid up for repairs.

XI.

The Court erred in failing to allow the libellant Four Thousand One Hundred Sixty-five (\$4,165.00) Dollars for wages of thirty (30) men, members of the crew of the “Bayard” during the period of repairs, November 3d to December 21, 1917,—49 days at \$85 per day.

XII.

The Court erred in failing to allow libelant the sum of One Thousand Four Hundred and Seventy (1,470.00) Dollars for victualling of said thirty men during the said period of repairs from November 3d to December 21, 1917,—49 days at \$30.00 per day.

NATHAN H. FRANK,

IRVING H. FRANK,

Proctors for Libelant and Appellant.

[Endorsed]: Receipt of a copy of the within Assignment of Errors is hereby admitted this 20th day of July, 1922.

McCUTCHEN, OLNEY, WILLARD, MAN-
NON & GREENE,

Proctors for Respondent.

Filed Jul. 20, 1922. W. B. Maling, Clerk. By
C. M. Taylor, Deputy Clerk. [255]

[Title of Court and Cause.]

No. 16303.

**Stipulation for Filing of Original Exhibits in Cir-
cuit Court of Appeals on Appeal Herein, and
Order Thereon.**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto, that the Exhibits introduced upon the trial
of the above-entitled action may be transmitted to
the Circuit Court of Appeals on appeal herein as
original Exhibits.

Dated: July 21, 1922.

NATHAN H. FRANK,
IRVING H. FRANK,
Proctors for Libelant.

FARNHAM GRIFFITHS,
McCUTCHEN, OLNEY, WILLARD, MAN-
NON & GREENE,

Proctors for Respondent and Claimant.

So ordered: July 24th, 1922.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: Filed July 24, 1922. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [256]

[Title of Court and Cause.]

No. 16303.

**Order Extending Time to and Including June 17,
1922, to File Assignment of Errors and Docket
Cause.**

IT IS HEREBY ORDERED that Aktieselskapet Bonheur, a corporation, Libelant herein, have to and including the 17th day of June, 1922, within which to file its assignment of errors herein and to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the apostles on appeal in such cause certified by the Clerk of this Court.

Dated: May 17, 1922.

M. T. DOOLING,
Judge United States District Court.

[Endorsed]: Filed May 17, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [257]

[Title of Court and Cause.]

No. 16303.

Order Extending Time to and Including July 17, 1922, to File Assignment of Errors and Docket Cause.

IT IS HEREBY ORDERED that Aktieselskapet Bonheur, a corporation, libelant herein, have to and including the 17th day of July, 1922, within which to file its assignment of errors herein and to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the apostles on appeal in said cause certified by the Clerk of this Court.

Dated: June 17, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Jun. 17, 1922. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [258]

[Title of Court and Cause.]

No. 16303.

Order Extending Time to and Including August 10, 1922, to File Assignment of Errors and Docket Cause.

IT IS HEREBY ORDERED that Aktieselskapet

Bonheur, a corporation, libelant herein, have to and including the 10th day of August, 1922, within which to file its assignment of errors herein and to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the apostles on appeal in said cause certified by the Clerk of this Court.

Dated: July 17, 1922.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Jul. 17, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [259]

Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 259 pages, numbered from 1 to 259, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Aktieselskapet Bonheur, a corporation, Libelant, vs. The American Steamer "Beaver," her tackle, etc., respondent No. 16303, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein), and the instructions of the proctors for libelant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of one hundred and six dollars and forty-five cents (\$106.45) and that the same has been paid to me by the proctor for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of August, A. D. 1922.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk.

[Endorsed]: No. 3906. United States Circuit Court of Appeals for the Ninth Circuit. Aktieselskapet Bonheur, a Corporation, Appellant, vs. San Francisco & Portland Steamship Company, a Corporation, Claimant of the American Steamer "Beaver," Her Tackle, Apparel, Engines, Boilers, Furniture, etc., Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed August 7, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Libelant's Exhibit No. 1.

Edward J. McCutchen
Warren Olney, Jr.
P. J. Muller
Ira A. Campbell
J. M. Mannon, Jr.
A. Crawford Greene
Charles W. Willard

John F. Cassell
Warren Olney
of Counsel

McCUTCHEM, OLNEY & WILLARD

Attorneys and Counselors at Law

Cable Address "Macpag"

DELIVER

Merchants Exchange Building

San Francisco, California

November 8, 1917.

Nathan Frank, Esq.,
Merchants Exchange Building,
San Francisco, California.

Dear Sir:

If the repairs to the "Bayard" of the injuries resulting from her collision with the steamer "Beaver" are repaired by the Union Iron Works Company on the basis of time and materials at going rates, the owners and underwriters of the "Beaver," if that vessel is ultimately held liable for the collision, will not question the propriety of

that method of repair. This is entirely without prejudice to the question of liability for the collision.

To further eliminate as far as possible controversy over the character of repairs to be made, we suggest that it would be well to permit the surveyors for the owners and underwriters of the "Beaver" to join with the surveyors for the owners and underwriters of the "Bayard" in preparing specifications for the repairs. This also is without prejudice to the question of liability for the collision.

Respectfully yours,

SAN FRANCISCO & PORTLAND STEAM-
SHIP CO.,

By G. L. BLAIR,
General Manager.

[Endorsed]: United States District Court. No. 16303. Bonheur vs. "Beaver." Lib. Exhibit No. 1. Filed June 17, 1918. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3906. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 7, 1922. F. D. Monckton, Clerk.

Libelant's Exhibit No. 2.

M/S "Bayard" Charter of May 16th, 1917.

VOYAGE CHARTER.

Cost of handling cargo under this charter:

Stevedoring loading.....	\$ 4497.35
" discharging.....	3726.45
Fuel Oil.....	2344.46
Dunnage	342.61
Cables & Telegrams	375.14
Clerk hire	139.50
Launch hire	351.45
Pilotage	155.43
Watchmen	71.70
Coal	63.00
Surveys	70.00
Paint	35.00
Water	65.00
Phones	10.10
Clearance & C. H. fees	121.01
Postages	5.00
Tugboat	105.00
Fumigator	2.90
Dockage	95.10
Reporting	5.00
Commission	5616.25
Philippine expenses	3723.19

Cost of operating vessel.... 21920.70

[Endorsed]: United States District Court. No. 16303. Bonheur vs. "Beaver" Lib. Exhibit No. 2. Filed June 17, 1918. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3906. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 7, 1922. F. D. Monckton, Clerk.

THE CHARTER PARTY
This Charter Party is made between the Charterers and the Owners of the vessel named above, for the purpose of affording facilities for the carriage of goods from the place named in the Charter Party to the place named in the Charter Party, and for the purpose of affording facilities for the carriage of goods from the place named in the Charter Party to the place named in the Charter Party, and for the purpose of affording facilities for the carriage of goods from the place named in the Charter Party to the place named in the Charter Party.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

The Charterers hereby warrant that the goods to be carried by this vessel are of the nature and quality of goods which are fit to be carried by a vessel of the type and class of the vessel named in the Charter Party, and that the goods are not of a dangerous or inflammable nature, and that the goods are not of a nature which is likely to damage or injure the vessel or the cargo or the crew of the vessel.

IN WITNESS WHEREOF, we have caused our name and seal to be set to this Charter Party, and the Seal to be affixed to the Charter Party, at the place named in the Charter Party, on the day and date above written.

Vessel to work freight and disch. under charterparty of charterers. All cargo subject to charterparty. This Charter Party is subject to approval of Charterers. Chartering Executive of London.

CHARTERERS

G. T. Day
Arthur Page

By telegraphic authority for and on behalf of Steamship Co. (LIMITED),
One Exchange, London, E.C. 4,
The Eastern & African Co.,
42, S. E. Corner, 77th Street, New York.



[Endorsed]: (Copy.) Charter Party. Danish Stmr. "Transvaal" to The Robt. Dollar Co., Orient & Return from San Francisco. Dated, 22d March, 1918.

United States District Court. No. 16303. Bonheur vs. "Beaver." Lib. Exhibit "A." Filed Dec. 18, 1918. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3906. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 7, 1922. F. D. Monckton, Clerk.

Certificate of Clerk U. S. District Court to Original Exhibits.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the accompanying exhibits, known and marked:

Libelant's Exhibit 1—Letter dated Nov. 8, 1917.

Libelant's Exhibit 2—Statement of cost.

Libelant's Exhibit A—Charter Party, are the original exhibits introduced and filed, in the case entitled: *Aktieselskapet Bonheur*, a Corporation, Libelant, vs. *The American Steamer "Beaver,"* her tackle, etc., Respondent, No. 16303, and are transmitted herewith in accordance with an order of this Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of August, A. D. 1922.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk.

[Endorsed]: No. 16303. In the Southern Division of the U. S. District Court, Northern District of California, First Division. *Aktieselskapet Bonheur*, a Corporation, Libelant, vs. *The American Steamer "Beaver,"* etc., Respondent. Certificate to Original Exhibits.

No. 3906. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 7, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

AKTIESELSKAPET BONHEUR, a Corporation,
Appellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation, Claimant for the
American Steamship "BEAVER,"
Appellee.

**Order Extending Time to and Including June 17,
1922, to File Assignment of Errors and Docket
Cause.**

Good cause appearing therefor, IT IS HEREBY ORDERED that Aktieselskapet Bonheur, a Corporation, appellant herein, have to and including the 17th day of June, 1922, within which to file its assignment of errors herein and to procure to be filed in the above-entitled Court, the apostles on appeal in such cause certified by the Clerk of the United States District Court for the Northern District of California, Southern Division, First Division.

Dated: May 17, 1922.

M. T. DOOLING,
District Judge.

[Endorsed]: No. 3906. In the United States Circuit Court of Appeals. Aktieselskapet Bonheur, a Corporation, Appellant, vs. San Francisco & Portland Steamship Company, a Corporation,

Claimant for the American Steamship "Beaver," Appellee. Order Extending Time to File Apostles on Appeal, etc. Filed May 17, 1922. F. D. Monckton, Clerk. Refiled Aug. 7, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

AKTIESELSKAPET BONHEUR, a Corporation,
Appellant,

vs.

American Steamer "BEAVER," Her Tackle,
etc., SAN FRANCISCO & PORTLAND
STEAMSHIP COMPANY, a Corporation,
Appellee.

Stipulation Re Printing Transcript of Record.

IT IS HEREBY STIPULATED that in printing the apostles on appeal herein, the Clerk may omit therefrom the extended title of court and cause in all cases except on the first page and first pleadings in the loer court, and insert in lieu of such caption "Title of Court and Cause."

Dated August 12, 1922.

NATHAN H. FRANK,
IRVING H. FRANK,

Proctors for Libelant and Appellant.

McCUTCHEEN, OLNEY, WILLARD, MAN-
NON & GREENE,

Proctors for Claimant and Appellee.

[Endorsed]: No. 3906. In the United States Circuit Court of Appeals for the Ninth Circuit. Aktieselskapet Bonheur, a Corporation, Appellant, vs. American Steamer "Beaver," Her Tackle, etc., San Francisco & Portland Steamship Company, a Corporation, Appellee. Stipulation in the Matter of Printing of Record. Filed Aug. 14, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk. ⁵¹
22-2